Konkurrenceretlig Nyhedsoversigt nr. 92 / dækkende 16. maj 2024 – 17. juni 2024

Indhold

1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Godkendelse på baggrund af en forenklet sagsbehandling af SLB's erhvervelse af enekontrol over Aker Carbon Capture Holding AS.
Transaktionen indebærer, at Cyprus erhverver 80 pct. af aktierne i ACCH. Cyprus erhverver dermed enekontrol over ACCH.
Læs mere
Dato: 30/05/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Nalka Invest AB's erhvervelse af fælleskontrol sammen med Kirk Kapital Strategic Investments A/S over Nemas HoldCo AS, herunder Norstat Denmark A/S.
Nalka Invest AB er en svensk virksomhed, der investerer i små og mellem- store virksomheder i Norden samt i Tyskland, Østrig og Schweiz. Nalka Invest AB's investeringsportefølje omfatter virksomheder, som er aktive inden for bl.a. IT-løsninger, medico og transport, herunder Precis Digital og Lekolar. Nalka Invest AB er ejet af Interogo Holding AG, som har hovedkvarter i Schweiz.

Kirk Kapital Strategic Investments A/S investerer i små og mellemstore virksomheder i Skandinavien. Kirk Kapital Strategic Investments A/S' in- vesteringsportefølje omfatter virksomheder, som er aktive inden for bl.a. industri og business services, herunder Cookie Information og Globeteam.

Nemas HoldCo AS er et norsk moderselskab i en paneuropæisk koncern specialiseret i dataindsamling til markedsanalyser. I Danmark er koncernen bl.a. aktiv via selskabet Norstat Denmark A/S, som er en dataleverandør til kvantitative og kvalitative markedsundersøgelser på tværs af brancher i Europa. Norstats metoder til dataindsamling omfatter online forbrugerpaneler, telefoninterviews, samt rekruttering af personer til interviews, fokusgrupper m.v.
Læs mere
Dato: 29/05/2024

Godkendelse på baggrund af en forenklet sagsbehandling af AKF's og Sampensions etablering af et selvstændigt fungerende joint venture.
Transaktionen udgør etableringen af et selvstændigt fungerende joint venture.
Læs mere
Dato: 22/05/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Capidea Kapital IV K/S' (gennem CapHold RPG ApS) erhvervelse af enekontrol over Avenida Consult ApS.
Ved transaktionen køber Capidea gennem selskabet CapHold RPG ApS 100 pct. af kapitalandelene i Avenida og opnår således enekontrol over Avenida.
Læs mere
Dato: 16/05/2024

Nyt fra Konkurrencerådet

Intet nyt.

Nyt fra Konkurrenceankenævnet

Intet nyt.

Nyt fra domstolene

Civilretlige afgørelser

Kendelse om konkurrenceretlige overtrædelser på værdihåndteringsmarkedet.
Østre Landsret har den 22. marts 2024 afsagt kendelse i en kæresag om indgåelse af en konkurrencebegrænsende aftale i form af en de facto eksklusiv aftale og misbrug af dominerende stilling ved brug af urimeligt lave priser.

Sagen angår markedet for værdihåndteringsydelser, hvor der frem til 2016 var tre konkurrenter, Bankernes Kontantservice A/S ("BKS"), som var ejet at et stort antal banker, Loomis Danmark A/S og Nokas Værdihåndtering A/S ("Nokas"). I forbindelse med Loomis Danmark A/S' køb i 2016 af BKS, blev der indgået en tillægsaftale til overdragelsesaftalen om de sælgende bankers fortsatte køb af værdihåndteringsydelser hos det solgte selskab BKS (som i dag hedder Loomis Teknik A/S). Nokas har gjort gældende, at denne tillægsaftale er en overtrædelse af konkurrencereglerne, og at BKS/Loomis Teknik A/S og Loomis Danmark A/S har handlet ansvarspådragende over for Nokas ved at indgå aftalen.

Herudover har Nokas gjort gældende, at BKS (i dag Loomis Teknik A/S) har anvendt urimeligt lave priser i strid med konkurrencelovgivningen over for otte kunder og dermed handlet ansvarspådragende i forhold til Nokas. Kæremålet angik alene spørgsmålet om ansvarsgrundlag, som af Sø- og Handelsretten var blevet udskilt til særskilt forlods afgørelse.

Landsretten fandt ligesom Sø- og Handelsretten, at det var bevist, at der var begået de anførte konkurrencelovsovertrædelser, og at der dermed var handlet ansvarspådragende i forhold til Nokas, og stadfæstede derfor Sø- og Handelsrettens kendelse.

Sagen, som er et privat erstatningssøgsmål anlagt af Nokas mod Loomis Teknik A/S (tidligere BKS) og Loomis Danmark A/S, fortsætter efter landsrettens afgørelse ved Sø- og Handelsretten, som nu skal tage stilling til, om de øvrige erstatningsretlige betingelser er opfyldt.

Kendelsen er gengivet i U 2024.3167 Ø.
Læs mere
Dato: 22/03/2024

Axel Kaufmann ApS mod Konkurrencerådet.
Sø- og Handelsretten har stadfæstet Konkurrencerådets afgørelse i to sager om ulovlig udveksling af informationer. I den ene sag har Hugo Boss og tøjforhandleren Kaufmann udvekslet oplysninger om priser, rabatter og mængder, og i den anden sag er tilsvarende oplysninger udvekslet mellem Hugo Boss og tøjforhandleren Ginsborg.

Hugo Boss sælger Boss-produkter i egne butikker og leverer samtidig Boss-produkter til blandt andet Kaufmanns og Ginsborgs butikker.

Hugo Boss og Kaufmann har udvekslet informationer om priser med videre fra januar 2014 til november 2017. Hugo Boss og Ginsborg har udvekslet informationer fra december 2014 til april 2018.

Konkurrencerådet afgjorde sagerne i 2020. Hugo Boss og Kaufmann ankede Konkurrencerådets afgørelse til Konkurrenceankenævnet, mens Ginsborg valgte ikke at anke. I 2021 stadfæstede Konkurrenceankenævnet de to rådsafgørelser, som blev anket videre til Sø- og Handelsretten, der nu ligeledes har stadfæstet Konkurrencerådets afgørelse.

Konkurrencerådet har anmeldt overtrædelserne til National enhed for Særlig Kriminalitet (NSK) med henblik på en strafferetlig forfølgelse.
Læs mere
Dato: 06/05/2024

Hugo Boss Nordic ApS mod Konkurrencerådet (Anket).
Sø- og Handelsretten har stadfæstet Konkurrencerådets afgørelse i to sager om ulovlig udveksling af informationer. I den ene sag har Hugo Boss og tøjforhandleren Kaufmann udvekslet oplysninger om priser, rabatter og mængder, og i den anden sag er tilsvarende oplysninger udvekslet mellem Hugo Boss og tøjforhandleren Ginsborg.

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Læs mere
Dato: 06/05/2024

Straffesager

Axel Kaufmann ApS - bøde på 6 millioner kr. - to personlige bøder på hver 120.000 kr. – informationsudveksling.
Kaufmann har betalt 6 millioner kroner for at have overtrådt konkurrenceloven ved at udveksle oplysninger om blandt andet priser med en konkurrent. Endvidere har to ledende medarbejdere fra Kaufmann hver betalt 120.000 kroner i bøde for at have medvirket til overtrædelsen.

Sagen indgår i et sagskompleks, hvor Hugo Boss ulovligt har udvekslet information med de to forhandlere Kaufmann og Ginsborg om priser, rabatter og/eller mængder ved fremtidige udsalg. Hugo Boss er leverandør til de to tøjforhandlere, men er også konkurrent, da Hugo Boss sælger Boss-produkter i egne butikker.

Hugo Boss og Kaufmann har udvekslet informationer fra januar 2014 til november 2017.

Andre dele af sagskomplekset verserer fortsat i retssystemet.

I 2020 afgjorde Konkurrencerådet, at flere tøjforhandlere, herunder Kaufmann, havde overtrådt konkurrenceloven. Siden har Konkurrenceankenævnet samt Sø- og Handelsretten stadfæstet, at informationsudvekslingen var ulovlig.

Det er National enhed for Særlig Kriminalitet (NSK), som står for den strafferetlige forfølgelse af sagerne.
Læs mere
Dato: 06/06/2024

Lovforslag i høring

Intet nyt.

Ny lovgivning

Intet nyt.

Nyt fra Ankestyrelsen

Intet nyt.

Andet

Erhvervsstyrelsens årsrapport på teleområdet for 2023.
Erhvervsstyrelsen rapporterer hermed for de sagsområder, som ligger inden for styrelsens ansvarsområde som national tilsynsmyndighed på teleområdet.

De nationale tilsynsmyndigheder skal efter teledirektivets artikel 8, stk. 2, hvert år udarbejde en rapport bl.a. om situationen på markedet for elektronisk kommunikation, hvilke beslutninger myndigheden har truffet, dens

personalemæssige og økonomiske ressourcer, hvordan disse ressourcer fordeles samt om dens fremtidige planer. Rapporterne skal offentliggøres.

Erhvervsstyrelsen er efter teledirektivet den nationale tilsynsmyndighed i Danmark på en række af de sagsområder, som er fastlagt i direktivet, og styrelsen skal rapportere i forhold til disse sagsområder. Det drejer sig bl.a. om forhåndsregulering af markedet, herunder om styrelsen har pålagt forpligtelser vedrørende adgang og samtrafik.
Læs mere
Dato: 03/06/2024

2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust & Cartels

Commission sends Statement of Objections to Alchem over first pharmaceutical cartel case in the EU.
The European Commission has informed Alchem International Pvt. Ltd. and its subsidiary Alchem International (H.K.) Limited (together 'Alchem') of its preliminary view that they have breached EU antitrust rules by participating in a long-lasting cartel concerning an important pharmaceutical product.

Alchem is a producer of the pharmaceutical ingredient N-Butylbromide Scopolamine/Hyoscine ('SNBB'). The Commission has concerns that Alchem may have coordinated and agreed with other market participants to fix the minimum sales price of SNBB to customers (i.e., distributors and generic drug manufacturers) and to allocate quotas. In addition, Alchem may have exchanged commercially sensitive information with competitors. In October 2023, the Commission adopted a settlement decision in relation to the same cartel and concerning other companies.

SNBB is an important input material to produce the abdominal antispasmodic drugs, Buscopan and its generic versions.

If the Commission's preliminary view were confirmed, such behaviour would violate EU rules that prohibit anti-competitive business practices such as collusion on prices and market sharing (Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement).
Læs mere
Dato: 13/06/2024

Commission calls on Czechia to improve competition for organising waste collection and recovery in the packaging sector.
The European Commission has informed Czechia that measures appointing EKO-KOM as the only company authorised for the collection and recovery of packaging waste for over two decades may be in breach of the EU competition rules.

EKO-KOM, based in Czechia, offers collection and recovery services for packaging waste. Since the entry into force of the Czech Packaging Act in 2002, EKO-KOM has been the only operator authorised to serve over 20,000 businesses in Czechia. No other company has succeeded in obtaining an authorisation for the provision of the same services.

The Commission's preliminary view is that certain provisions of the Czech Packaging Act as well as Czechia's enforcement of such rules may have created significant entry barriers for rival companies. Such barriers include authorisation requirements that are very difficult to meet, such as strict contractual and financial conditions. They also include the possibility for EKO-KOM to influence the authorisation proceedings of other applicants given that, as the established incumbent, it has access to and the right to comment on the application files of potential new entrants. Moreover, potential entrants are required to coordinate certain aspects of their planned commercial activities with EKO-KOM as the established incumbent.

The Commission preliminarily considers that such State measures led to unequal opportunities for EKO-KOM's rivals and placed EKO-KOM in a position of conflict of interest, due to its dual role as both a market participant competing with any new entrant and a third party enjoying certain procedural rights in the authorisation process of new applicants. The measures effectively prevented other companies from being authorised by the Czech authorities and allowed EKO-KOM

to operate as a de facto monopolist for more than two decades, thereby hindering the development of effective competition in the Czech market for waste collection and recovery.

The Commission has voiced its competition concerns in the form of a Letter of Formal Notice. If the Commission's preliminary view is confirmed, this conduct would infringe Article 106 of the Treaty on the Functioning of the European Union ('TFEU') in conjunction with Article 102 TFEU.
Læs mere
Dato: 11/06/2024

Commission fines Mondelēz €337.5 million for cross-border trade restrictions.
The European Commission has fined Mondelēz International, Inc. (Mondelēz) €337.5 million for hindering the cross-border trade of chocolate, biscuits and coffee products between Member States, in breach of EU competition rules. The Commission remains committed to bringing down unjustified barriers to ensure a better functioning of the Single Market. Territorial supply constraints by suppliers are a type of non-regulatory barriers to a proper functioning of the Single Market.
Læs mere
Dato: 23/05/2024

Mergers

Commission approves KKR's acquisition of NetCo.
The European Commission has approved unconditionally, under the EU Merger Regulation, the acquisition by KKR & Co. Inc. ('KKR') of NetCo. The Commission concluded that the transaction would raise no competition concerns in the European Economic Area ('EEA').

KKR, based in the US, is a global investment firm that offers alternative asset management as well as capital markets and insurance solutions.

NetCo, based in Italy, is a newly founded company comprised of FiberCop, which is currently jointly controlled by KKR and TIM, as well as TIM's primary and backbone fixed-line network. FiberCop, based in Italy, provides passive-only services on TIM's secondary network and upgrades TIM's secondary assets from copper to fibre in Italy. Post-transaction, NetCo will provide, among others, wholesale fixed access services on both its copper and fibre networks in Italy.

Primary fixed-line networks connect the service provider central office to the street cabinet. Secondary fixed-line networks connect the street cabinet to the user premises. Backbone/backhaul fixed-line networks connect different regions and data centres with each other and to the internet.
Læs mere
Dato: 30/05/2024

State Aid

Commission opens in-depth State aid investigation into German measures to support local bus transport operator WestVerkehr.
The Commission's assessment started on the basis of a complaint of a competitor of WestVerkehr, alleging that WestVerkehr benefitted from State aid incompatible with the internal market. WestVerkehr has been entrusted with the performance of a public service obligation in the district of Heinsberg since 2007.

The alleged aid measures are: (i) a direct award of a public service contract by the district of Heinsberg to WestVerkehr; (ii) a profit and loss transfer agreement between WestVerkehr and its majority shareholder NEW Kommunalholding GmbH; (iii) a payment into WestVerkehr's capital reserve by its minority shareholder Kreiswerke Heinsberg GmbH; and (iv) a current account agreement between WestVerkehr and Kreiswerke Heinsberg. NEW Kommunalholding and Kreiswerke Heinsberg are companies in which the district of Heinsberg holds shares.
Læs mere
Dato: 13/06/2024

Commission finds Hungarian support for new auto parts plant in Észak Magyarország to be incompatible State aid.
In October 2022, the Commission opened an in-depth investigation to assess whether Hungary's plans to grant €43.76 million (around HUF 15.9 billion) to GKN Automotive Hungary Kft (previously Rubin NewCo Kft) for the construction of a new automotive components plant in the northern Hungary region of Észak Magyarország was in line with EU State aid rules.

Based on its in-depth investigation, the Commission concluded that Hungary failed to prove that the aid was decisive for the beneficiary to locate its investment in Hungary. The available evidence showed that the beneficiary had decided to invest in Hungary without considering the public support and there was no sufficient evidence that the investment would take place in another location.

Since the public support did therefore not have a real "incentive effect" and it did not effectively encourage GKN Automotive Hungary to invest in the specific region of Észak Magyarország, the aid is incompatible with EU State Aid rules. Therefore, the aid cannot be granted by Hungary.
Læs mere
Dato: 11/06/2024

Commission seeks feedback on draft targeted amendments to rules on small amounts of State aid to the agricultural sector.
The European Commission has launched today a public consultation inviting all interested parties to comment on draft targeted amendments to the rules on small amounts of aid to the agricultural sector ('Agricultural de minimis Regulation'). All interested parties can respond to the public consultation until 21 July 2024.

The draft amendments include the following changes:

- The increase of the maximum de minimis ceiling per company over three years, from €25,000 to €37,000, to account for inflation.
- The adjustment the 'national caps', which are calculated based on the value of agricultural output. The current rules take into account the reference period 2012-2017 for this calculation. This reference period would be expanded to 2012-2023, which allows to take account of the increased value of agricultural production particularly during the last years, thereby increasing the national cap for all Member States.
- The maximum aid amount will be calculated over a period of three years instead of three fiscal years, in line with the non-sector specific general de minimis rules.
- The introduction of a mandatory central register of de minimis aid at national or European level, to increase transparency and reduce administrative burden on farmers who currently use a self-declaration system and as they will no longer need to self-monitor compliance (currently, such central registers are voluntary for Member States).

Læs mere
Dato: 07/06/2024

Commission approves Italian State aid scheme to support electricity production from renewable energy sources.
Italy notified the Commission of its intention to introduce a scheme to support the production of electricity from renewable energy sources. The measure, which will run until 31 December 2028, will be financed through a levy included in the electricity bills of final consumers.

The scheme will support the construction of new plants running on innovative and not yet mature technologies, namely geothermal energy, offshore wind power (floating or fixed), thermodynamic solar, floating solar, tidal, wave and other marine energy as well as on biogas and biomass. The plants are expected to add a total of 4590 MW of renewable electricity capacity to the Italian electricity system. Depending on the technology, the deadline for successful plants to enter into operation varies between 31 to 60 months.

Under the scheme, the aid will take the form of a two-way contract for difference for each kWh of electricity produced and fed into the grid, and will be paid for a duration equal to the useful life of the plants. The projects will be selected through a transparent and non-discriminatory bidding process, where beneficiaries will bid on the incentive tariff (the strike price) needed to carry out each individual project. The reference price for electricity will be calculated as the hourly zonal price, which is the electricity price at the time the energy is fed into the grid and in the market area where the plant is located.

When the reference price is below the strike price, the beneficiaries will be entitled to receive payments equal to the difference between the two prices. However, when the reference price is above the strike price, the beneficiaries will have to pay the difference to the Italian authorities. The scheme will ensure long-term price stability for the renewable energy producers by guaranteeing a minimum level of return, while at the same time ensuring that the beneficiaries will not be overcompensated for periods when the reference price is higher than the strike price.
Læs mere
Dato: 04/06/2024

Commission approves €2 billion Italian State aid measure to support STMicroelectronics to set up a new semiconductor manufacturing facility.
Italy notified the Commission of its plan to support ST's Catania Campus project to build and operate an integrated chip manufacturing plant for SiC power devices. SiC is a compound material used to manufacture wafers that serve as a base for specific microchips used in high-performance power devices, such as in electric vehicles, fast-charging stations, renewable energies and other industrial applications. The integrated plant will cover all the manufacturing steps from the raw material to the finished devices, namely power transistors and power modules.

The aid will take the form of an approximately €2 billion direct grant to ST to support its investment worth €5 billion in total. The project will enable the development of a large-scale manufacturing facility for high performance SiC chips, based on 200mm diameter wafers that will be processed into modules and other devices used for instance by the automotive industry, in Europe and globally. The facility is planned to be operating at full capacity in 2032.

Under the measure, ST agreed to:

1. ensure that the project will have a clear positive impact with spill-over effects on the EU semiconductor value chain beyond ST and Italy;
2. contribute to the development of the next generation of the 200 mm SiC technology, as well as to a technology roadmap for SiC modules in the EU;
3. implement priority rated orders in the case of a supply shortage in line with the European Chips Act and ensure that the project will not be subject to the extraterritorial application of public service obligations imposed by a third country; and
4. develop and deploy educational and skills trainings to increase the pool of qualified and skilled workforce.

The project builds on technologies that have been and will be developed as part of the Important Projects of Common European Interest ("IPCEIs") for research and innovation in microelectronics approved by the Commission in December 2018 and in June 2023. On 4 March 2024, ST applied for the recognition of the Catania Campus as an integrated production facility under the European Chips Act. This process is independent from the State aid assessment.
Læs mere
Dato: 31/05/2024

Commission amends Guidelines on Regional State aid to allow increased support to Strategic Technologies for Europe Platform projects.
Regional aid is an important instrument used by Member States to enhance regional development.

The RAG set out the rules under which Member States can grant State aid to companies to support investments in the less advantaged regions of Europe. Member States notify regional maps, which are assessed and approved by the Commission, defining the regions where regional investment aid is allowed and establishing the maximum amount of State aid that can be granted, expressed as a percentage of eligible investment costs.

Today's amendment allows Member States to amend their regional aid maps to allow increased levels of regional aid for investment projects covered by the STEP by up to:

- 10 percentage points in the regions eligible for aid under Article 107(3)(a) of the Treaty on the Functioning of the European Union (so-called ‘a' areas); and
- 5 percentage points in the regions eligible for aid under Article 107(3)(c) of the Treaty on the Functioning of the European Union (so-called ‘c' areas).

Læs mere
Dato: 31/05/2024

Commission approves up to €1 billion of State aid by six Member States for the first Important Project of Common European Interest in the health sector.
The project, called 'IPCEI Med4Cure', was jointly notified by six Member States: Belgium, France, Hungary, Italy, Slovakia and Spain.

The Member States will provide up to €1 billion in public funding, which is expected to unlock additional €5.9 billion in private investments. As part of this IPCEI, 13 companies with activities in one or more Member States, including nine small and medium-sized enterprises ('SMEs'), will undertake 14 highly innovative projects.

IPCEI Med4Cure concerns research and development projects covering all key steps of the pharmaceutical value chain from collection and study of cells, tissues and other samples, to sustainable production technologies of breakthrough therapies, including personalised treatments, and to application of advanced digital technologies.

The project aims at accelerating medical advancement and at fostering the resilience of the EU health industry by enhancing drug discovery, in particular for unmet medical needs such as rare diseases, and developing innovative and more sustainable production processes for pharmaceuticals. These developments will improve the quality of healthcare and increase the EU's preparedness for emerging health threats while contributing to the green transition.

The completion of the overall IPCEI is planned for 2036, with timelines varying in function of the individual projects and the companies involved. According to the participating Member States, around 6,000 direct and indirect jobs are expected to be created.
Læs mere
Dato: 28/05/2024

Commission approves up to €1.4 billion of State aid by seven Member States for the fourth Important Project of Common European Interest in the hydrogen value chain.
The project, called 'IPCEI Hy2Move', was jointly prepared and notified by seven Member States: Estonia, France, Germany, Italy, Netherlands, Slovakia and Spain.

The Member States will provide up to €1.4 billion in public funding, which is expected to unlock additional €3.3 billion in private investments. As part of this IPCEI, 11 companies with activities in one or more Member States, including small and medium-sized enterprises ('SMEs') and start-ups, will undertake 13 innovative projects.

IPCEI Hy2Move will cover a wide part of the hydrogen technology value chain, by supporting the development of a set of technological innovations, including:

- The development of mobility and transport applications to integrate hydrogen technologies in transport means (road, maritime and aviation). This includes, for example, fuel cell vehicle platforms for use in buses and trucks.
- The development of high-performance fuel cell technologies, which use hydrogen to generate electricity with sufficient power to move ships and locomotives.
- The development of next generation on-board storage solutions for hydrogen. For the use in aircraft, lightweight, yet robust hydrogen tanks are necessary ensuring safety and efficiency in flight conditions.
- The development of technologies to produce hydrogen for mobility and transport applications, in particular for supplying hydrogen refuelling stations on-site with pressurised, 99.99% pure fuel-cell-grade hydrogen.

IPCEI Hy2Move complements the first three IPCEIs on the hydrogen value chain. The Commission approved IPCEI 'Hy2Tech' on 15 July 2022, which focuses on the development of hydrogen technologies for end users. IPCEI 'Hy2Use' was approved on 21 September 2022 and focuses on hydrogen applications in the industrial sector. IPCEI 'Hy2Infra', approved by the Commission on 15 February 2024, concerns infrastructure investments, which are not covered by the first two IPCEIs. Hy2Move focuses exclusively on specific challenges and objectives that arise for hydrogen technology in mobility and transport applications.

The completion of the overall IPCEI is expected by 2031, with timelines varying in function of the individual projects and the companies involved. Around 3,600 direct jobs are expected to be created, and many more indirect ones.
Læs mere
Dato: 28/05/2024

Commission approves €3.2 billion Czech State aid scheme to support high-efficiency combined heat and power generation.
Czechia notified to the Commission its intention to support the production of electricity in high-efficiency CHP plants. The scheme will run until 31 December 2025. The estimated budget of the scheme is €3.2billion (CZK 75 billion).

The beneficiaries are operators of new or modernised CHP installations in Czechia that meet the definition of high-efficiency cogeneration as set out in the Energy Efficiency Directive. All technologies and projects that enable the production of electricity from high-efficiency CHP installations are eligible, except for those powered by solid fossil fuels, diesel and oil. Projects involving natural gas will be required to either close the aided installations or enable switch to renewable and low-carbon gases by 2050, to avoid lock-in of natural gas.

Under the scheme, the aid will take the form of a feed-in premium (bonus) for each MWh of produced electricity for a duration of 15 years. The amount of bonus is set through tenders, except for small installations (up to 1 MWe) where the amount is set administratively by the Czech Energy Regulatory Office on an annual basis and limited to the funding gap.

The scheme is expected to bring around 9.3 million tonnes of CO2 savings per year.
Læs mere
Dato: 27/05/2024

Commission approves €4 billion French State aid scheme to support decarbonisation measures in the manufacturing sector.
France notified to the Commission, under the Temporary Crisis and Transition Framework, a €4 billion scheme to support (i) investments in electrification of industrial processes and (ii) investments in energy efficiency, to foster the transition to a net-zero economy.

Under this measure, the aid will take the form of direct grants amounting to up to 30% of the project's investment costs. The measure will be open to companies active in the manufacturing sector in France. Eligible electrification projects must lead to a reduction of greenhouse gas emissions from industrial processes of at least 40% compared to today, while energy efficiency projects must lead to a reduction in the energy consumed in industrial processes of at least 20% compared to today. For investments relating to activities covered by the EU Emission Trading System ('ETS'), the emissions reduction must go below the relevant ETS benchmarks in force at the time of granting the aid.

The Commission found that the French scheme is in line with the conditions set out in the Temporary Crisis and Transition Framework. In particular, (i) the aid per beneficiary will not exceed 10% of the total budget (i.e. €400 million); and (ii) it will be granted until no later than 31 December 2025. Furthermore, the aid will be subject to conditions to ensure actual emissions savings. The investments must be completed within 36 months after the aid has been granted.

In addition, the public support will come subject to conditions to limit undue distortions of competition. In particular, the aid must not enable the beneficiaries to increase their production capacity beyond 2% compared to today.

The Commission concluded that the French scheme is necessary, appropriate and proportionate to accelerate the green transition and facilitate the development of certain economic activities, which are of importance for the implementation of the REPower EU Plan and the Green Deal Industrial Plan, in line with Article 107(3)(c) TFEU and the conditions set out in the Temporary Crisis and Transition Framework.

On this basis, the Commission approved the aid measure under EU State aid rules.
Læs mere
Dato: 24/05/2024

Commission approves €1.7 billion German State aid scheme to support rail freight transport operators providing single and group wagon transport.
Germany notified the Commission of its intention to introduce a €1.7 billion scheme to support rail freight operators of single and group wagon transport services. The aim of the scheme is to help rail operators cover part of the high operating cost. In doing so, the scheme aims to support and preserve the modal shift from road to rail transport, thus promoting a greener means of transport.

In single wagon load transport, individual wagons or groups of wagons from different consignors are bundled together to form one train. On the contrary, wagon group transport keeps the same composition from the origin to the destination and is eligible under the scheme for journeys up to a maximum distance of 300 km if operated by short block

trains with up to 15 wagons. Both types of transport struggle to reach economic viability. Single wagon load transport entails high costs due to its complex and multi-step nature resulting from the switching and shunting of wagons. Wagon group transport operated by short block trains does not benefit from economies of scale due to the lower number of wagons and the short distances they serve.

Under the scheme, the aid will take the form of direct grants. The maximum annual budget amounts to €320 million, with an overall budget of €1.7 billion over the five-year duration of the scheme. The scheme will run until 2029.
Læs mere
Dato: 21/05/2024

Andet

High-Level Group for the Digital Markets Act agrees to coordinate efforts to ensure that AI development aligns with the DMA objectives.
On 22 May 2024, the High-Level Group for the Digital Markets Act ("High-Level Group") convened for the third time in Brussels.

During this meeting, the High-Level Group agreed on the need to coordinate enforcement and adopted a public statement on Artificial Intelligence. Additionally, the Group agreed to create a dedicated sub-group to discuss Artificial Intelligence. In the framework of this sub-group, the High-Level Group will:

- follow developments in this critical area of policy, exploring the interactions between the DMA and other regulatory instruments;
- continue to exchange enforcement experience and regulatory expertise relevant for the implementation and enforcement of the DMA also with regard to AI;
- develop means to ensure effective cooperation, leading to a consistent regulatory approach across the DMA and other legal instruments.

Læs mere
Dato: 23/05/2024

High-Level Group for the Digital Markets Act Public Statement on Artificial Intelligence.
The high-level group is composed of the Body of the European Regulators for Electronic Communications (BEREC), the European Data Protection Supervisor (EDPS) and European Data Protection Board, the European Competition Network (ECN), the Consumer Protection Cooperation Network (CPC Network), and the European Regulatory Group of Audiovisual Media Regulators (ERGA). The HLG is chaired by the Commission, which participates in its meetings and provides the secretariat in order to facilitate its work.
Læs mere
Dato: 22/05/2024

Commission designates Booking as a gatekeeper and opens a market investigation into X.
The European Commission has today designated under the Digital Markets Act (DMA), Booking as a gatekeeper for its online intermediation service Booking.com and decided not to designate X Ads and TikTok Ads. In parallel, the Commission has opened a market investigation to further assess the rebuttal submitted in relation to the online social networking service X.

Today's decisions follow a review process conducted by the Commission after receiving the notifications of the three companies regarding their potential status as gatekeepers on 1 March 2024.
Læs mere
Dato: 13/05/2024

Report from the Commission to the Council and the European Parliament update on competition enforcement in the pharmaceutical sector (2018-2022): European competition authorities working together for affordable and innovative medicines.
This Report provides an overview of how the Commission and the national competition authorities of the EU Member States have enforced EU antitrust and merger rules concerning medicines and certain other medical products in the period 2018-2022. It also reports on how EU competition law served to protect undertakings and consumers during the challenging period of the Covid-19 crisis. It is a follow-up to the previously published Report covering the years 2009-2017.

In the period covered by this report, from 2018 until 2022, the European competition authorities together adopted 26 antitrust decisions related to pharmaceutical products. These decisions led to sanctions (with fines nearing EUR 780 million) or made binding commitments to remedy anti-competitive behaviour. Some of these decisions addressed anti-competitive practices that had previously not been addressed under EU competition law. These precedents give guidance to industry players on how to ensure that they comply with EU competition rules. In 2018-2022, European competition authorities also investigated more than 40 pharma cases which were closed without an infringement or commitment decision, while some 30 cases of possible anti-competitive infringements in the pharmaceutical sector are currently being examined.
Læs mere
Dato: 26/01/2024

Nyt fra EU-domstolen

Domme

C-40/23 P – Kommissionen mod Nederlandene.
Nøgleord: Appel – statsstøtte – lov om forbud mod anvendelse af kul til fremstilling af elektricitet – førtidig lukning af et kulkraftværk – tildeling af en erstatning – afgørelse, der erklærer foranstaltningen forenelig med det indre marked uden at tage stilling til, om der foreligger statsstøtte – Europa-Kommissionens udøvelse af kompetencen.

Tvisten:
Den 27. marts 2019 anmeldte de nederlandske myndigheder et lovforslag om forbud mod anvendelse af kul til fremstilling af elektricitet til Kommissionen i overensstemmelse med Europa-Parlamentets og Rådets direktiv (EU) 2015/1535 af 9. september 2015 om en informationsprocedure med hensyn til tekniske forskrifter samt forskrifter for informationssamfundets tjenester (EUT 2015, L 241, s. 1). Dette lovudkast, som havde til formål at reducere emissionerne af kuldioxid (CO_2) i Nederlandene, og som indeholdt en mulighed for at tildele kompensation for den skade, som påføres et kulkraftværk, der i forhold til andre kraftværker er uforholdsmæssigt påvirket af forbuddet mod anvendelse af kul til fremstillingen af elektricitet, blev ikke anmeldt til Kommissionen i overensstemmelse med artikel 108, stk. 3, TEUF.

Efter anmeldelsen af lovforslaget i medfør af direktiv 2015/1535 indledte Kommissionen på eget initiativ undersøgelsen af oplysningerne vedrørende en formodet støtte.

Kongeriget Nederlandene vedtog den 11. december 2019 Wet verbod op kolen bij elektriciteitsproductie (lov om forbud mod kul til elproduktion, Stb. 2019, nr. 493). Denne lovs artikel 4 gav mulighed for at tilkende en erstatning til et kraftværk, som i forhold til andre kraftværker ville blive uforholdsmæssigt påvirket af forbuddet mod at anvende kul til fremstillingen af elektricitet. I denne forbindelse modtog Vattenfall NV, der driver en af de fem kulkraftværker i Nederlandene, dvs. Hemweg 8-værket, en erstatning på 52,5 mio. EUR fra den nederlandske stat (herefter »den pågældende foranstaltning«). På grund af sine middelmådige tekniske og miljømæssige karakteristika blev dette værk i modsætning til de fire øvrige kulkraftværker i Nederlandene udelukket fra at drage fordel af den overgangsperiode, der var fastsat i den nævnte lov, og var således nødt til at lukke førtidigt.

Den 12. maj 2020 vedtog Kommissionen den omtvistede afgørelse. Med hensyn til forekomsten af statsstøtte konkluderede den i denne afgørelses punkt 48, at »henset til oplysningerne leveret af de nederlandske myndigheder [kunne] det ikke konkluderes med tilstrækkelig sikkerhed, at der i denne sag [bestod] en ret til erstatning på et beløb på 52,5 mio. EUR«. [...] Kommissionen udledte heraf, at »det ikke [kunne] udelukkes, at den [pågældende] foranstaltning tildeler den pågældende virksomhed statsstøtte«. Kommissionen fandt imidlertid i den omtvistede afgørelses punkt 49, at »det ikke [var] nødvendigt at drage en endelig konklusion i den foreliggende sag med hensyn til spørgsmålet, om [den pågældende foranstaltning] [ville give] en fordel til den, som drev kraftværket, og således [udgjorde] statsstøtte som omhandlet i artikel 107, stk. 1, TEUF, eftersom den, selv ved forekomsten af statsstøtte, [ville fastslå], at foranstaltningen [var] forenelig med det indre marked«. Kommissionen konkluderede, »at [den pågældende foranstaltning] [var] forenelig med det indre marked i henhold til artikel 107, stk. 3, litra c), [TEUF]«.

Dom:
1) Appellen forkastes.
2) Europa-Kommissionen tilpligtes at bære sine egne omkostninger og at betale de af Kongeriget Nederlandene afholdte omkostninger.

Læs mere

Dato: 13/06/2024

Forslag til afgørelse

C-264/23 – Booking.com og Booking.com (Deutschland).
Nøgleord: Præjudiciel forelæggelse – konkurrence – aftaler mellem virksomheder – kontrakter mellem en onlineplatform til hotelreservationer og hoteller – prisparitetsklausuler – artikel 101 TEUF – accessoriske begrænsninger – gruppefritagelse – vertikale aftaler – forordning (EU) nr. 330/2010 – afgrænsning af markedet.

Tvisten:
I juli 2015 indstillede Booking.com, efter konsultation med de franske, de italienske og de svenske konkurrencemyndigheder, anvendelsen af de brede prisparitetsklausuler, som virksomheden indtil da havde anvendt i samtlige kontrakter. Booking.com erstattede disse klausuler med smalle prisparitetsklausuler. Sidstnævnte hindrer hoteller i at tilbyde værelser til en lavere pris via deres direkte salgskanaler.

Den 22. december 2015 afgjorde Bundeskartellamt (forbundskonkurrencemyndigheden), at smalle prisparitetsklausuler er i strid med artikel 101 TEUF og den tilsvarende bestemmelse i tysk ret (herefter »Booking.com-afgørelsen«). Bundeskartellamt fandt, at klausulerne begrænsede konkurrencen på markedet for udbud af hotelopholdsydelser og, i praksis, konkurrencen på markedet for levering af onlineformidlingstjenester via platforme for hoteller (3). Som følge af Booking.coms store andel af det relevante marked var klausulerne ikke fritaget i medfør af Kommissionens forordning nr. 330/2010 af 20. april 2010 om anvendelse af artikel 101, stk. 3, i traktaten om Den Europæiske Unions funktionsmåde på kategorier af vertikale aftaler og samordnet praksis (herefter »den tidligere gruppefritagelsesforordning«). Betingelserne for anvendelse af en individuel fritagelse efter artikel 101, stk. 3, TEUF var heller ikke opfyldt.

Oberlandesgericht Düsseldorf (den regionale ret i første instans i Düsseldorf) fastslog ved kendelse af 4. juni 2019, at smalle prisparitetsklausuler begrænser konkurrencen, men at de er nødvendige med henblik på at undgå parasitisk adfærd. Klausulerne forhindrede hotellerne i at anvende Booking.com til at opnå kontakt med kunderne og herefter anspore disse til at booke direkte hos hotellerne. Oberlandesgericht Düsseldorf (den regionale ret i første instans i Düsseldorf) fandt, at klausulerne er at anse for accessoriske begrænsninger, der ikke er i strid med artikel 101, stk. 1, TEUF. Retten annullerede derfor Booking.com-afgørelsen.

Den 18. maj 2021 ophævede Bundesgerichtshof (forbundsdomstol, Tyskland) dommen og stadfæstede Booking.com-afgørelsen. Forbundsdomstolen fastslog, at smalle prisparitetsklausuler begrænser konkurrencen på markedet for levering af hotelopholdsydelser. I den tidligere fritagelsesforordning var klausulerne hverken fritaget eller at anse for accessoriske begrænsninger. Afvejningen af konkurrencefremmende og konkurrencebegrænsende virkninger af smalle prisparitetsklausuler skal udøves på grundlag af en konkret vurdering efter artikel 101, stk. 3, TEUF. Bundesgerichtshof (forbundsdomstol) fandt, at klausulerne ikke var objektivt nødvendige med henblik på at gennemføre en hovedtransaktion, da det ikke var godtgjort, at Booking.coms rentabilitet ville blive kompromitteret uden disse klausuler.

I 2020 anlagde organisationen Hotelverband Deutschland (IHA) eV, der repræsenterer over 2 600 hoteller, et erstatningssøgsmål mod Booking.com ved Landgericht Berlin (den regionale ret i første instans i Berlin, Tyskland).

Booking.com har den 23. oktober 2020 anlagt sag ved Rechtbank Amsterdam (retten i første instans i Amsterdam, Nederlandene) med påstand om, at det fastslås, at virksomheden ved anvendelsen af prisparitetsklausulerne ikke handlede i strid med artikel 101 TEUF. I forbindelse med sagsanlægget har 62 tyske hoteller fremsat et modkrav om erstatning fra Booking.com som følge af virksomhedens overtrædelse af artikel 101 TEUF (herefter »hotellerne, der har fremsat modkrav«).

A. M. Collins' forslag til afgørelse:

1) Artikel 101, stk. 1, TEUF skal fortolkes således, at de brede og smalle prisparitetsklausuler, som et onlinerejsebureau ønsker at anvende i dets forretningsbetingelser over for hoteller, ikke er at anse for accessoriske begrænsninger, medmindre de er nødvendige og står i rimeligt forhold til målet om at sikre onlinerejsebureauets rentabilitet, hvilket det, med forbehold af den forelæggende rets vurdering i henhold til artikel 101, stk. 3, TEUF, tilkommer den nævnte ret at afgøre.
2) Artikel 3, stk. 1, i Kommissionens forordning nr. 330/2010 af 20. april 2010 om anvendelse af artikel 101, stk. 3, i traktaten om Den Europæiske Unions funktionsmåde på kategorier af vertikale aftaler og samordnet praksis skal fortolkes således, at det er nødvendigt, at det relevante produktmarked for aktiviteterne for et

onlinerejsebureau, der formidler kontakt mellem hoteller og slutkunder, skal afgrænses ved en bedømmelse af, om andre salgskanaler for hotellerne og slutkunderne er substituerbare med henblik på en beregning af onlinerejsebureauets markedsandel som leverandør af onlineformidlingstjenester til hoteller.

Læs mere
Dato: 06/06/2024

C-697/22 P – Koiviston Auto Helsinki mod Kommissionen.
Nøgleord: Appel – statsstøtte – bustransport – udstyrslån og kapitallån ydet af Helsingfors by – afgørelse, hvorved støtten erklæres uforenelig med det indre marked og anordnes tilbagesøgt – økonomisk kontinuitet – de interesserede parters proceduremæssige rettigheder – artikel 6, stk. 1, i forordning (EU) 2015/1589 – offentliggørelse af en supplerende eller ændret indledningsafgørelse – tilsidesættelse af væsentlige formforskrifter – proportionalitetsprincippet.

Tvisten:
Helsingin Bussiliikenne (herefter »det gamle HelB«) (5) blev stiftet den 1. januar 2005 af Suomen Turistiauto Oy, som var et privat transportselskab ejet af Helsingin kaupunki (Helsingfors by, Finland), efter at dette havde erhvervet alle aktiver og passiver i HKL-Bussiliikenne Oy, en spinoffvirksomhed fra transportafdelingen i Helsingfors by. Det gamle HelB drev busruter i regionen Helsingfors (Finland) og tilbød chartertransport og busleasing. Det var helejet af Helsingfors by.

I perioden 2002-2012 traf Helsingfors by forskellige foranstaltninger til fordel for HKL-Bussiliikenne og det gamle HelB (herefter »de omtvistede foranstaltninger«). For det første ydede den i 2002 HKL-Bussiliikenne et udstyrslån på 14,5 mio. EUR med henblik på at finansiere anskaffelsen af bustransportudstyr. Dette lån blev overtaget af det gamle HelB den 1. januar 2005. For det andet ydede Helsingfors by ved stiftelsen sidstnævnte et kapitallån på i alt 15 893 700,37 EUR med henblik på refinansiering af visse passiver i HKL-Bussiliikenne og Suomen Turistiauto. For det tredje ydede Helsingfors by den 31. januar 2011 og den 23. maj 2012 det gamle HelB to nye kapitallån på henholdsvis 5,8 mio. EUR og 8 mio. EUR.

Den 31. oktober 2011 indgav de offentlige transportselskaber Nobina Sverige AB og Nobina Finland Oy en klage til Kommissionen, som deres moderselskab Nobina AB tilsluttede sig den 15. november 2011. Med klagen gjorde de gældende, at Republikken Finland havde indrømmet det gamle HelB en ulovlig støtte. Den 22. november 2011 tilsendte Kommissionen Republikken Finland denne klage.

Ved afgørelse C(2015) 80 final af 16. januar 2015 indledte Kommissionen den formelle undersøgelsesprocedure, der er foreskrevet i artikel 108, stk. 2, TEUF, vedrørende bl.a. de omtvistede foranstaltninger. Denne afgørelse blev offentliggjort i Den Europæiske Unions Tidende den 10. april 2015, og de interesserede parter blev opfordret til at fremsætte deres bemærkninger inden for en måned fra denne offentliggørelse.

Den 24. juni 2015, under sagens behandling, underrettede Helsingfors by endvidere Kommissionen om iværksættelsen af en procedure for afhændelse af det gamle HelB. Den 5. november 2015 tilsendte Republikken Finland Kommissionen et forslag til salgsaftale, som var udarbejdet sammen med appellanten.

Den 14. december 2015 blev det gamle HelB solgt til appellanten, som tidligere hed Viikin Linja Oy. I henhold til bestemmelserne i salgsdokumenterne blev dette selskab omdøbt til Helsingin Bussiliikenne Oy (herefter »det nye HelB«). Salgsdokumenterne om transaktionen omfattede et vilkår om fuld godtgørelse af køberen af det gamle HelB i tilfælde af et krav om tilbagebetaling af statsstøtte (herefter »godtgørelsesvilkåret«), og en del af salgsprisen blev indsat på en spærret konto indtil vedtagelsen af en endelig afgørelse vedrørende statsstøtten, eller senest til den 31. december 2022.

Salget til Viikin Linja vedrørte alle kommercielle aktiviteter i det gamle HelB. Det gamle HelB bevarede ingen aktiver med undtagelse af de beløb, der var indbetalt eller skulle indbetales på den spærrede garantikonto. Passiverne efter de omtvistede foranstaltninger blev ikke overført til det nye HelB. Efter salget af det gamle HelB fritog Helsingfors by det nye selskab fra at tilbagebetale restgælden af udstyrslånet af 2002. Den 11. december 2015 konverterede Helsingfors by endvidere kapitallånene af 2005, 2011 og 2012, som ikke var blevet tilbagebetalt, til egenkapital i det gamle HelB.

Den 28. juni 2019 vedtog Kommissionen den omtvistede afgørelse, uden at appellanten var blevet opfordret til at fremsætte bemærkninger

L. Medinas forslag til afgørelse:

1) Den Europæiske Unions Rets dom af 14. september 2022, Helsingin Bussiliikenne mod Kommissionen (T-603/19, EU:T:2022:555), ophæves.
2) Kommissionens afgørelse (EU) 2020/1814 af 28. juni 2019 om statsstøtte SA.33846 – (2015/C) (ex 2014/NN) (ex 2011/CP) ydet af Finland til Helsingin Bussiliikenne Oy annulleres.
3) Europa-Kommissionen bærer sine egne omkostninger såvel i forbindelse med sagen for Retten som i appelsagen og betaler de omkostninger, som Koiviston Auto Helsinki Oy har afholdt i forbindelse med begge disse sager.

Læs mere
Dato: 16/05/2024

C-255/22 P – Orlen mod Kommissionen.
Nøgleord: Appel – konkurrence – artikel 102 TEUF – EØF-aftalens artikel 54 – misbrug af dominerende stilling – central- og østeuropæiske gasmarkeder – artikel 9, stk. 1, i Kommissionens forordning (EF) nr. 1/2003 – Kommissionens afgørelse, hvorved de af en virksomhed foreslåede individuelle tilsagn gøres bindende – annullationssøgsmål – tilsagnenes hensigtsmæssighed i forhold til de konkurrencemæssige betænkeligheder, som blev identificeret i klagepunktsmeddelelsen – arten af Unionens retsinstansers domstolsprøvelse – Kommissionens afkald på at kræve tilsagn vedrørende visse af de oprindelige betænkeligheder – begrundelsespligt – formålet med Unionens energipolitik – artikel 194 TEUF – princippet om energimæssig solidaritet – anvendelighed.

Tvisten:
I den omtvistede afgørelse anførte Kommissionen indledningsvis en foreløbig vurdering af Gazproms praksis, inden den fremlagde de oprindelige tilsagn, resultaterne af markedstesten og de endelige tilsagn. Dernæst anførte den sin vurdering af de endelige tilsagn og grundene til, at den fandt, at de var tilfredsstillende i forhold til de konkurrencemæssige betænkeligheder.

Ved stævning indleveret til Rettens Justitskontor den 15. oktober 2018 anlagde appellanten sag med påstand om annullation af den omtvistede afgørelse. Til støtte for søgsmålet fremførte appellanten seks anbringender, hvoraf de tre første nærmere bestemt vedrørte en tilsidesættelse af artikel 9 i forordning nr. 1/2003, sammenholdt med artikel 102 TEUF, og af proportionalitetsprincippet, for så vidt som Kommissionen havde anlagt et åbenbart urigtigt skøn, idet den accepterede endelige tilsagn, der var utilstrækkelige eller uhensigtsmæssige, og hvoraf det fjerde vedrørte en tilsidesættelse af artikel 194, stk. 1, TEUF, sammenholdt med artikel 7 TEUF, for så vidt som den omtvistede afgørelse var i strid med formålet med Unionens energipolitik, og for så vidt som Kommissionen ikke havde taget hensyn til denne afgørelses negative indvirkning på det europæiske marked for gasforsyning. Det femte anbringende vedrørte Kommissionens forskellige behandling af henholdsvis Gazproms kunder, der drev virksomhed i medlemsstaterne i Vesteuropa, og de kunder, der drev virksomhed i de berørte lande i Central- og Østeuropa. Det sjette anbringende vedrørte Kommissionens tilsidesættelse af formålet i henhold til artikel 9 i forordning nr. 1/2003 og dens overskridelse af grænserne for sine beføjelser ved afviklingen af den administrative procedure.

Den 2. februar 2022 afsagde Retten den appellerede dom, hvorved den forkastede samtlige disse anbringender og dermed frifandt Kommissionen i annullationssøgsmålet i dets helhed.

A. Rantos' forslag til afgørelse:
1. På baggrund af de ovenfor anførte betragtninger foreslår jeg, at Domstolen forkaster det første appelanbringendes tredje led, det andet appelanbringende og det tredje appelanbringendes første led som ugrundede.

Læs mere
Dato: 06/06/2024

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.

Andet internationalt nyt

CMA: Public cloud infrastructure services market investigation.
Cloud services are increasingly important inputs to many businesses and organisations across the UK economy and across a range of different industries.

Evidence we have seen to date shows that a relatively small number of high-spend customers account for a large proportion of cloud providers' UK revenues and a relatively large number of low-spend customers are responsible for a small proportion of their revenue. In particular, the top 10% of customers account for a very large majority of revenues and the top 1% account for over half of revenues.

Customers buy the large majority of cloud services directly from cloud providers. Most customers have standard contracts that have been agreed without negotiation, but larger customers either engage in bilateral negotiations and occasional tenders and are able to negotiate terms that depart from standard contracts.

There are different models of multi-cloud use, and we cannot accurately measure the full extent of switching by customers, or the extent to which customers use multiple clouds.

However, the evidence we have seen to date suggests that, while there is some degree of multi-cloud use, it may be quite limited in scope and mostly found amongst larger customers. This evidence also suggests that switching between cloud providers is uncommon. We are continuing to consider the evidence of the prevalence of switching and use of multiple public clouds by customers.

Cloud providers compete on a range of factors and the factors that seem to be the most important to customers when choosing their main public cloud provider are service quality, price (including discounts and/or cloud credits), data sovereignty requirements, range of services and the number and location of data centres.
Læs mere
Dato: 06/06/2024

CMA: Digital markets competition regime guidance - Consultation document.
This consultation seeks the views of interested parties on two pieces of draft guidance on the CMA's functions under the digital markets competition regime established by Part 1 of the Digital Markets, Competition and Consumers Act 2024.

These guidance documents are:

- Digital markets competition regime guidance.
- Guidance on the merger reporting requirement for firms with strategic market status (SMS).

Læs mere
Dato: 24/05/2024

CMA: Consultation on the proposed variation to the commitments in respect of Meta's use of advertising data.
The Competition and Markets Authority (CMA) invites views on a variation of the commitments offered by Meta to address the CMA's competition concerns in the context of its prior investigation under the Competition Act 1998. These commitments related to Meta's conduct in relation to the collection and use of data obtained through the provision of digital display advertising services.

The CMA accepted binding commitments relating to the prior investigation on 3 November 2023 (the Current Commitments). These required Meta to implement technical systems to prevent the use of certain advertiser data in the operation of Facebook Marketplace, and to ensure that employees refrain from using certain advertising data for product development in competition with advertisers. Meta's proposed variation to the commitments (the Proposed Variation) includes the possibility for Meta to limit the use of certain data from all advertisers from being used in the operation and development of Facebook Marketplace.

The CMA provisionally considers that the Proposed Variation addresses the competition concerns identified by the CMA for the reasons set out in the Notice of Intention to Accept a Variation of Commitments. Therefore, subject to consultation responses, the CMA proposes to accept the Proposed Variation.
Læs mere
Dato: 24/05/2024

CMA: Progress update on the cloud services market investigation.
This document sets out an update for interested stakeholders on the CMA's market investigation into public cloud infrastructure services (cloud services).

Our main evidence gathering has included:
1) a series of information requests, including through the use of our compulsory powers,3 to the main providers of cloud services in the UK;
2) site visits to each of AWS, Microsoft and Google in December 2023 and January 2024;
3) a large number of information requests to customers of cloud services in the UK;
4) calls held with a range of customers as well as intermediaries to understand their use of public cloud better; and
5) the commissioning of primary qualitative research amongst UK customers of cloud services that was carried out between January and March 2024.

Today we have published the first set of our working papers: these are on the competitive landscape for cloud services in the UK and two of the four theories of harm set out in our issues statement: egress fees and committed spend agreements.
Læs mere
Dato: 23/05/2024

Authority for Consumers & Markets: 2023 ACM Postal and Parcel Markets Scan: Turnover of the broader postal and parcel market goes up, consumers pay more yet experience less quality.
In 2023, the Dutch again sent more parcels than in the previous year. As a result, total turnover of the broader postal and parcel market went up. Both the volume as well as the turnover of the parcel market increased last year, and saw increases of 1.9 and 4.0 percent, respectively. The growth in turnover on the parcel market thus offset the drop in turnover on the postal market. Over the past few years, the Dutch paid more and more for many of the different categories of postal items. Quality scores for postal delivery went down, as revealed by the latest 2023 Postal and Parcel Markets Scan of the Netherlands Authority for Consumers and Markets (ACM).

In 2023, total turnover on the parcel market went up 97 million to over 2.5 billion euros. The postal market saw a drop of 58 million euros. Total turnover on that market was still 828 million euros. On the postal market, most of the volume comes from business senders, and went down 8.8 percent, whereas the volume on the parcel market went up 1.9 percent compared with 2022.

That means that, in 2023, on balance, turnover on the broader delivery market (postal and parcel) slightly went up compared with 2022. Total market turnover was well over 3.3 billion euros. Compared with 2019, turnover on the entire postal and parcel market went up more than 800 million euros, from 2.5 billion to 3.3 billion euros in 2023.

One striking observation in 2023 was the continued growth in the number of letterbox-sized parcels, an area where postal and parcel delivery overlap. Letterbox-sized parcels qualify as parcels, which are often delivered together with regular postal items because they fit through the letterbox. Since 2019, the number of letterbox-sized parcels has more than doubled. In 2019, 29 million of such parcels were sent compared with 65 million in 2023. Turnover of these letterbox-sized parcels has also more than doubled, from 69 million in 2019 to 152 million euros in 2023. Dutch postal operator PostNL handles, by far, the most of this type of parcel. Rival operator DHL has a market share of between 20 and 25 percent. ACM has seen the price of this product slightly decrease over the past few years, possibly as a result of increasing competition on this market.
Læs mere
Dato: 16/05/2024

3 | LITTERATUR (DK)

Artikler fra UfR

Intet nyt.

Nye publikationer fra Erhvervsministeriet

Intet nyt.

Artikler fra Juristen

Intet nyt.

Artikler fra Erhvervsjuridisk Tidsskrift

Intet nyt.

Artikler fra Revision og Regnskabsvæsen

Intet nyt.

Artikler fra EU- og Menneskeret

Intet nyt.

Anden dansk og nordisk litteratur

Europarättslig tidskrift nr. 2 2024:

Beslut om platsundersökning enligt konkurrenslagen – en undersökning av Patent- och marknadsdomstolens beslut. Forfatter: Tova Edwinson.

Konkurrensrätt och idrott – European Superleague, International Skating Union och Royal Antwerp Football. Forfatter: Johan Karlsson.

4 | LITTERATUR (UK)

Artikler fra European Competition Law Review

Volume 45, issue 7, 2024:

Judicial and legislative developments to the extraterritorial application of UK anti-trust law: if you can't beat them, join them. Forfatter: Aidan Robertson.
Reflects on the UK's shifting approach to the extraterritorial application of competition law, highlighting the significance of legislative developments including the Competition Act 1998, and the approach of case law including Bayerische Motoren Werke AG v Competition and Markets Authority (CAT).

Algorithms and competition law - status and challenges. Forfattere: Peter Georg Picht og Anna-Katharina Leitz.
Discusses a Swiss research project on the influence of algorithms on competition law, highlighting the rules available to companies to combat the risks of algorithmic collusion, unilateral conduct using generative artificial intelligence, and how algorithmic auditing can screen problematic activity.

The discretion of competition authorities and their liability for damage they cause with erroneous decisions. Forfatter: Phedon Nicolaides.
Considers, with reference to cases, how the European Commission's wide discretion when assessing competition effects makes it difficult to establish its liability for damage caused by an erroneous ruling. Suggests why its discretion needs more precise delineation and approval by independent experts.

The ECN+ Directive, successor liability and mergers: an unintended source of leniency applications? Forfatter: Beverley Williamson.
Reviews key provisions of Directive 2019/1 (ECN+ Directive), the justifications for its adoption, and the implications of its single economic unit and successor liability doctrines for merger due diligence in Ireland, including their impact on competition enforcement and leniency applications.

A comparative analysis of blockchain and competition law in the European Union and the United States: decentralization, data accumulation and collusion. Forfatter: Charles Ho Wang Mak.
Compares how competition authorities in the EU and US approach the challenges of blockchain technology, including its potential to foster collusion and cartels. Suggests regulatory reforms such as a multi-stakeholder approach, dialogue with blockchain developers, and transatlantic collaboration.

The gun jumping obligation, some pieces of the puzzle are still missing: Case Altice Group Lux v Commission (C-746/21). Forfattere: Pierre Goffinet og Mediona Shehu.
Comments on Altice Group Lux Sarl v European Commission (C-746/21 P), highlighting the cumulative fines imposed for failure to notify and pre-notification implementation of the concentration, and remaining uncertainties concerning the concepts of partial implementation and direct functional link.

Murder on the dance floor - the Danish disco cartel. Forfatter: Christian Bergqvist.
Comments on the Danish Competition Council decision in ECIT Account A/S, fining a provider of services to nightclubs participating in a joint purchasing arrangement which precluded opening of proximate establishments. Considers the decision's compatibility with the EU horizontal guidelines.

Bulgaria: anti-competitive practices – judgment. Forfatter: Anton Dinev.
Notes a Bulgarian Supreme Administrative Court ruling of 11 September 2023, partially overturning a judgment that itself annulled and replaced a decision of the Commission for Protection of Competition on whether construction consultancies participated in anti-competitive conduct and bid-rigging.

Canada: mergers - merger control. Forfatter: Kaeleigh Kuzma.
Notes the Canadian Competition Bureau's consent agreement in Beton Provincial Ltee / CRH Canada Group Inc, addressing concerns that a substantial lessening of competition would result from a merger in the cement and ready-mix concrete markets, and requiring divestiture of designated operations.

Czech Republic: anti-competitive agreements – investigation. Forfatter: Tomas Fiala.
Notes the Czech Competition Office ruling in Zasilkovna sro, accepting commitments from a company in the out-of-home delivery market following an investigation into whether its non-compete obligations with operators of pick-up and drop-off points amounted to anti-competitive practices.

Finland: competition - legislative proposal. Forfattere: Maarit Taurula og Sofia Tuononen.
Notes Finnish legislative proposals to complement the domestic impact of EU Regulation 2022/1925 (Digital Markets Act) by clarifying and enhancing the powers of the Finnish Competition and Consumer Authority, including by granting it powers to conduct inspections and market investigations.

Finland: procurement – judgment. Forfattere: Maarit Taurula og Sofia Tuononen.
Notes the Finnish Market Court ruling in Wellbeing Services County of Vantaa and Kerava, involving the contracting out of human resources management services in an in-house procurement case. Details the grounds for ordering the contracts' early termination, and imposing a symbolic penalty payment.

France: anti-competitive practices - infringement Emmanuel Reille og Philip Olszewski.
Notes the French Competition Authority ruling in Google, imposing a fine of EUR 250 million for non-compliance with commitments addressing competition concerns involving related rights, aimed at creating conditions for balanced negotiations between digital platforms, press agencies and publishers.

Ireland: mergers – reform. Forfatter: Vincent J.G. Power.
Highlights Ireland's introduction of a simplified notification procedure for media mergers, taking effect on 10 April 2024. Details the aims of the reform, the conditions needed for its application, its benefits and the potential uncertainties surrounding its use.

Netherlands: mergers - merger control. Forfattere: Jotte Mulder og Ivo Barends.
Notes the Dutch Competition Authority ruling in KPN / Youfone, approving a merger between two mobile telecommunications service providers on the basis that it would not hamper competition. Details key features of the authority's investigation.

Poland: anti-competitive practices – infringement. Forfatter: Agata Jurkowska-Gomulka.
Notes the Polish Competition Authority ruling in Stihl, imposing fines totalling approximately EUR 55 million on a company and one of its managers for obstructing a dawn raid on its premises, to investigate allegations of anti-competitive practices involving resale price maintenance.

Romania: mergers - merger control. Forfattere: Cristina de Jonge og Denisa Kopandi.
Notes the Romanian Competition Council ruling in Med-Serve United SRL / Andofarm SRL / Zen Pharma SRL, approving a merger involving four pharmaceutical and parapharmaceutical retailers. Details the key competition concerns investigated, and the basis for finding no distortions of competition.

South Africa: mergers - merger control. Forfattere: Lizel Blignaut, Justin Balkin, Preanka Gounden og Julian Mort.
Discusses the unintended negative consequences of South Africa's competition law permitting third party interventions in merger control proceedings, including significant time delays and forced concessions by the merging parties. Suggests potential reforms to address such consequences.

Spain: anti-competitive practices – judgment. Forfatter: Pedro Callol.
Notes Spanish High Court decisions of 28 December 2023, annulling fines imposed on four banks by the National Competition and Markets Commission for alleged participation in a financial derivatives cartel, finding that continuity of conduct was not established and the proceedings were time-barred.

Spain: anti-competitive practices – judgment. Forfatter: Pedro Callol.
Notes Spanish High Court decisions of October 2023 on whether fines imposed on media agencies by the National Competition and Markets Commission for participation in a cartel for exchanging sensitive commercial information should be upheld. Details the relevance of whether an economic unity existed.

Turkiye: anti-competitive practices – infringement. Forfattere: Gonenc Gurkaynak, Eda Duru og Betul Bas Comlekci.
Notes the Turkish Competition Board ruling in Aksaray Unlu Mamulleri Gida Sanayi ve Ticaret Limited Sirketi, fining a company one thousandth of its gross 2022 revenue for providing misleading information during an investigation of alleged anti-competitive conduct involving resale price maintenance.

United Kingdom: mergers – judgment. Forfatter: Nivi Balaji.
Notes Cerelia Group Holdings SAS v Competition and Markets Authority (CA) on the Competition Appeal Tribunal's role when reviewing CMA decisions, and whether "special reasons" under the Enterprise Act 2002 s.39 existed for extending the CMA's timeline for issuing a final report on a merger.

Volume 45, issue 6, 2024:

The systemic implications of the European Super League ruling of the European Court of Justice. Forfatter: Professor Francesco Rizzuto.
Reflects on the implications of European Superleague Company SL v Federation internationale de football association (FIFA) (C-333/21) (ECJ), on whether UEFA's exclusionary model of organising inter-club competitions restricted freedom of movement and was an abuse of dominance requiring reform.

The DMA plus expanding a pro-competition approach to digital markets to other policies: a case of net neutrality. Forfatter: Oles Andriychuk.
Reviews the competition law goals of Regulation 2022/1925 (Digital Markets Act), and suggests how its rationale might be tailored to allow competition in relation to the speed with which digital users receive delivery of content, by softening the application of the current net neutrality rules.

EU Artificial Intelligence Board: proposals for a more centralised and proactive enforcement. Forfatter: Martin Toskov.
Examines the structure and role of the EU Artificial Intelligence Board under the proposed Artificial Intelligence Act, and compares its regulatory approach with current legislation. Suggests how the proposals may be strengthened to provide a more holistic application of artificial intelligence.

State aid in the nuclear sector: what is the legal test? Forfatter: Evelyne Ameye.
Discusses, with reference to case law, key features of the Commission's reasoning when assessing the validity of state aid in the nuclear sector, highlighting its approach to whether aid is compatible with TFEU art.107, and its application of the reasonable market investor test.

Canada: mergers - judgment (Case Comment). Forfatter: Kaeleigh Kuzma.
Notes the Canadian Supreme Court's refusal to grant leave to appeal a decision that Secure Energy Services Inc's acquisition of Tervita Corp would cause a substantial lessening of competition in the oilfield waste disposal services sector, together with the accompanying remedial order.

Denmark: anti-competitive practices - infringement (Case Comment). Forfatter: Jens Munk Plum.
Notes a Danish Competition and Consumer Authority ruling which held that restrictive business practices in the wholesale home furnishings market amounted to a price co-ordination cartel, notwithstanding that both parties could have independently raised their prices due to increased freight costs.

Estonia: anti-competitive practices - decision (Case Comment). Forfatter: Triinu Järviste.
Notes the Estonian Competition Authority ruling in Viru Matuseteenused OU, on whether a mortuary and funeral services provider with a service contract for the local hospital abused a dominant position by charging unfairly high prices. Highlights the geographical considerations influencing dominance.

European Union: anti-competitive practices - judgment (Case Comment). Forfatter: Prof. Bruce Wardhaugh.
Notes MS v Lietuvos Respublikos konkurencijos taryba (C-128/21) (ECJ) and Em akaunt BG EOOD v Zastrahovatelno aktsionerno druzhestvo Armeets (C-438/22) (ECJ) on whether a minimum fee imposed by legislation, or a body regulating a profession, constituted horizontal price fixing under TFEU art.101.

Finland: mergers - merger control. Forfatter: Maarit Taurula.
Notes revised guidelines published by the Finnish Competition and Consumer Authority in March 2024 concerning acceptable commitments in merger control, and intended to streamline commitment negotiations.

France: anti-competitive practices - infringement - restrictive business practices (Case Comment). Forfatter: Emmanuel Reille.
Notes the French Competition Authority decision in De Neuville / Savencia Holding, fining a chocolate maker and its parent approximately EUR 4 million jointly and severally for limiting franchisees' online sales and sales to business customers, with the effect of territorial market allocation.

Ireland: mergers - annual report. Forfatter: Dr Vincent J G Power SC.
Notes key features of the Irish Competition and Consumer Protection Commission's annual report for 2023 concerning mergers, including the number of notifications made, and the outcome of Commission investigations. Discusses emerging trends, and the impact of the Competition (Amendment) Act 2022.

Ireland: mergers - merger control - decision (Case Comment). Forfatter: Dr Vincent J G Power SC.
Notes the Irish Competition and Consumer Protection Commission decision in PHOENIX Pharma SE / McCabes Pharmacy, declaring a merger notification invalid based on inadequacy of the parties' responses to requests for information, three months after the notification. Notes lessons for merging parties.

Netherlands: anti-competitive practices - judgment (Case Comment). Forfatter: Jotte Mulder.
Notes the Rotterdam District Court ruling in Samsung v Authority for Consumers and Markets, upholding the fine of over EUR 38 million imposed on Samsung for restrictive business practices involving influencing the online retail price of televisions. Details the grounds of the court's decision.

Poland: anti-competitive practices - infringement (Case Comment). Forfatter: Prof. Agata Jurkowska-Gomułka.
Notes the decision of the President of the Polish Office for Competition and Consumer Protection in Atax, fining a wholesale and retail seller of hard coal approximately EUR 555,000 for restrictive business practices involving resale price maintenance through so-called "agency agreements".

Portugal: anti-competitive practices - infringement (Case Comment). Forfatter: Cláudia Coutinho da Costa.
Notes the fines of approximately EUR 1.3 million and EUR 2.48 million imposed by the Portuguese Competition Authority on 25 January 2024 on two companies in the technology consultancy sector for using "no poach" agreements in the employment market. Details the settlements that reduced the fines.

Portugal: anti-competitive practices - decision (Case Comment). Forfatter: Cláudia Coutinho da Costa.
Notes the Portuguese Competition Authority decision in SIBS Group, fining the leading participant in the payment services sector EUR 13.9 million for allegedly abusing its dominant position through the use of tying practices intended to reduce competition. Highlights the possibility of an appeal.

Portugal: anti-competitive practices – investigation. Forfatter: Cláudia Coutinho da Costa.
Notes the statement of objections issued by the Portuguese Competition Authority (PCA) concerning the alleged imposition of sales restrictions by a trader company of Enterprise Application Software on its distributors, following the PCA's investigation into a possible selective distribution system.

Romania: competition - annual report. Forfatter: Cristina de Jonge.
Highlights key features of the Romanian Competition Council's annual report for 2023, including the record number of investigations, the total amount of fines imposed for anti-competitive conduct, the use of unannounced inspections, and statistics on mergers and acquisitions.

Slovenia: competition policy - annual report. Forfatter: Eva Škufca.
Notes key features of the Slovenian Competition Protection Agency's (CPA) 2023 annual report, including the impact of regulatory changes made by the Competition Protection Act 2022, the CPA's investigations of anti-competitive conduct, its merger control activities, and its priorities for 2024.

South Africa: mergers - international merger control. Forfatter: HB Senekal.
Notes the January 2024 publication of the Common Market for Eastern and Southern Africa (COMESA) Competition Commission's draft regulations, highlighting their proposed suspensory merger control regime, their abolition of the time period for making merger notifications, and the questions they raise.

Spain: mergers - merger control (Case Comment). Forfatter: Pedro Callol.
Notes the Spanish National Competition and Markets Commission ruling in Mooring & Port Services SL / Cemesa Amarres Barcelona SA, imposing a EUR 80,000 fine on two companies for failing to comply with merger commitments imposed in 2021 when they created the sole mooring company in Barcelona's port.

Spain: anti-competitive practices – enforcement. Forfatter: Pedro Callol.
Highlights the Spanish National Competition and Markets Commission 's July 2023 publication of revised guidelines for estimating damages in private actions for competition law infringements, and summarises the fundamental points addressed.

Turkiye: anti-competitive practices - decision (Case Comment). Forfatter: Dr. Gönenç Gürkaynak, Esq.
Notes the Turkish Competition Board ruling in Sahibinden Bilgi Teknolojileri Pazarlama ve Ticaret AS, fining an online platform services company one thousandth of its 2021 annual gross revenue for providing misleading information during an investigation into its alleged abuse of a dominant position.

United Kingdom: competition - annual plan for 2024-2025. Forfatter: Sabra Ferhat.
Highlights the Competition and Markets Authority's publication of its annual plan for 2024-25, detailing its achievements over the previous year, its areas of focus for the year ahead, and the CMA's additional powers under the Digital Markets, Competition and Consumers Bill 2023-24.

Artikler fra European Competition Journal

Intet nyt.

Artikler fra Journal of Competition Law and Economics

Volume 20, issue 1-2, March – June 2024:

The Effective Use of Economics in the EU Digital Markets Act. Forfattere: Amelia Fletcher, Jacques Crémer, Paul Heidhues, Gene Kimmelman, Giorgio Monti, Rupprecht Podszun, Monika Schnitzer, Fiona Scott Morton og Alexandre de Streel.
Economic thinking and analysis lie at the heart of the objectives and the design of the EU Digital Markets Act (DMA). However, the design of the DMA reflects a very deliberate—and reasonable—intention to ensure clarity, speed,

administrability, and enforceability. In doing so, this pro-competitive regulation omits several elements of standard competition law where economics has typically played a key role. Nonetheless, we believe that economic insights and analysis—including behavioural economic thinking—will continue to play an important role in enabling the DMA to achieve its ambitious and laudable goals, albeit in a somewhat different way.

Merging Laggards. Forfattere: Jorge Padilla, Salvatore Piccolo og Paul Reynolds.
We argue that mergers among market laggards (new entrants or innovation challengers) should be treated differently than those involving leaders (established players or first-mover innovators). We show that these mergers can be rivalry-enhancing, either by accelerating entry or promoting innovations, leading to lower quality-adjusted prices and higher consumer surplus. This is more likely to happen when entry (or innovation) costs are relatively high, so that entry (or innovation) is profitable only when it is limited to a few players. In these circumstances, if laggards enter, they will do so probabilistically and inefficiently since each of them would have to condition its entry to scenarios in which other laggards stay out, which may not be possible since entry decisions are secret. By removing or mitigating this coordination failure, a merger among laggards may lead to more entry (or innovation). Such a merger will also be more likely to benefit consumers when the products of laggards and leaders are sufficiently differentiated—that is, when competition is not too intense absent the merger. Importantly, we find that in the presence of fixed entry costs and endogenous entry, fixed cost synergies are relevant for assessing the welfare effects of mergers. These efficiencies enhance the social value of mergers among laggards insofar as they make entry into the market for the merged entity less costly, thereby expanding the spectrum of products available to consumer and increasing their welfare.

The Simple Math of Royalties and Drug Competition During the 180-Day Generic Exclusivity Period. Forfattere: Keith M Drake og Thomas G McGuire.
In drug patent litigation settlements, the plaintiff brand commonly licenses the defendant generic to sell before patent expiry. Some agreements require the generic to pay the brand royalties. Despite the superficial flow of payments, royalty terms may function as part of an anticompetitive "reverse payment" made to the generic in exchange for delayed entry. Typically, the brand launches its own authorized generic (AG) during the first-to-file generic's 180-day exclusivity period so initially there are two generic competitors. A royalty structure that deters the brand's AG launch reduces the number of entrants to one, conveying net value to the generic by allowing it to capture the entire generic market, potentially inducing it to delay its entry. Royalties usually have no place in a brand–generic agreement between rational actors. However, our simple model shows that when royalties are conditioned on the brand's AG launch, a range of royalty rates exists that conveys net value to the generic by deterring the brand from rationally introducing an AG. Royalty terms that are conditioned on the brand's AG launch thus raise a red flag that the agreement is a pay-for-delay. Although the numbers are small, publicly available materials on industry experience corroborate this conclusion.

"Multi-Product Critical Loss: Allowing for Varying Margins, Prices, and Quantities in the Candidate Antitrust Market". Forfattere: Shawn W Ulrick og Mark D Williams.
Critical loss analysis is important in defining antitrust product and geographic markets as it directly implements the hypothetical monopolist test. Traditionally, critical loss analysis assumes all products in the candidate market earn the same margin at current prices. In effect, this approach treats all products as a single, representative product. This is technically incorrect. This paper develops the appropriate measures of critical loss assuming products in the candidate markets have different margins, different current prices, and different initial quantities. We also address issues in the implementation of critical loss analysis. This paper is meant to be accessible to the practitioner.

Economic Principles for the Enforcement of Abuse of Dominance Provisions. Forfattere: Chiara Fumagalli og Massimo Motta.
The European Commission (EC) has recently announced its intention to issue Guidelines on exclusionary abuses. In this paper, we explain how economics can and should be used to inform a sound and effects-based approach in the enforcement of Article 102 TFEU. In particular, the EC should be guided only by a consumer welfare standard; exclusive dealing and exclusivity rebates should be subject to a (rebuttable) presumption of harm; price–cost tests are meaningful only for predation and other practices that do not reference rivals; essentiality of the input should not be a requirement for vertical foreclosure cases of any type, but such cases should be limited only to dominant firms that satisfy certain criteria.

Empirical Effects of Resale Price Maintenance: Evidence from Fixed Book Price Policies in Europe. Forfatter: Rhys J Williams.
This paper investigates the effects of Resale Price Maintenance (RPM) agreements in Europe by studying a legally permitted form of RPM in the book market. In particular, we study the effects of such agreements on prices and sales, finding that countries which have Fixed Book Prices policies witness higher book sales, relative to countries without such a policy, with no noticeable effect on the average price of books. We suggest that the mechanism for these findings is that FBP policies promote non-price competition and a diverse network of retailers, increasing quantity, whereas a

change in bargaining power reduces double marginalisation, offsetting upward pricing pressure from RPM. While these results are limited to the book sector and are based on a limited number of countries changing policy, they nonetheless highlight that RPM agreements have the ability to confer positive competition effects and absolute prohibition of such agreements may not always be warranted.

Conditional Rebates and Intel: A Step Backwards by any Standard? Forfatter: Matthew Cole.
This paper considers the law on conditional rebates. It sets out the changes introduced by the Court of Justice of the European Union (CJEU) Intel decision and how these have been applied in the General Court Intel Renv case. It is explained that the changes are part of a broader move to bring EU competition law in line with a Consumer Welfare Standard (CWS). An analysis of the new test then reveals that it is flawed for five reasons: the new test ignores the fact that low prices and exclusion are separable. The test incorporates the As-Efficient Competitor test, which only protects firms with low costs, not those that are more competitive as a whole. The test introduces a new standard of harm, which means that the law no longer prevents the restriction of competition, but rather prevents making it impossible for a firm with the same costs as the dominant undertaking to compete, which is a different standard. The new standard diminishes the deterrent effect of the law. Finally, compared with the original test, the CJEU test fails to maximize consumer surplus (despite that being the aim of the CWS). Therefore, there is no reason to retain the test and it is recommended that it is reversed.

Price Effects of Horizontal Mergers: A Retrospective on Retrospectives. Forfatter: Annika Stöhr.
This comprehensive review of ex post merger studies assesses the price effects of horizontal transactions to determine whether there are common post-merger price effects, both overall and in specific markets. The aim is to derive implications for policy makers and competition authorities in terms of effective merger enforcement and competition policy. By combining and further analysing the results of 52 retrospective studies on 82 mergers or horizontal transactions, it can be shown that the sector in which the respective transaction takes place alone is not a strong indicator of the direction of price-related merger effects. In contrast, the 'size' or 'importance' of a transaction as well as market concentration seem to be correlated with post-transaction price increases, especially in already highly concentrated markets. Overall, this meta-study shows the importance of ex post case studies for improving ex ante merger control: although generalizations can only be made with caution, the subsequent analysis of a case and its ex post observable outcome can provide useful information for future merger enforcement in general, either in the same industry and/or with similar case characteristics, as well as for competition policy regulators.

Artikler fra Journal of Antitrust Enforcement

Intet nyt.

Artikler fra Journal of European Competition Law and Practice

Volume 15, issue 2, March 2024.

How Much Credit Should Antitrust Give to Socio-Political Goals, and How? Forfatter: Alejandra Palacios.
It is not news to say that global antitrust policy and enforcement issues are becoming increasingly complex. In the midst of a 'poly-crisis' encompassing both geopolitical and macroeconomic challenges—'including the cost-of- living crisis, fragmented supply chains and military conflict, (...) advancements in technology and artificial intelligence, as well as strengthened sustainability ambitions'1, the antitrust community grapples with the extent to which agencies should intervene and the modalities of such interventions to address some of these pressing issues, and help restore trust in the global order and economic structures.

The European Commission's Cartel Settlement Procedure: An Assessment after 15 Years. Forfatter: Wouter P J Wils.
Key points:

- With effect on 1 July 2008, the European Commission established a cartel settlement procedure 'to handle faster and more efficiently cartel cases'.
- It was hoped that the settlement procedure would 'reduce litigation before the European Courts in cartel cases', 'free resources to deal with other cases, increasing the detection rate and overall efficiency of […] enforcement' and 'have a positive impact on general deterrence'.
- Examining all cartel cases concluded by the European Commission in the first fifteen years following the introduction of the cartel settlement procedure, in comparison with the cartel cases concluded in the ten

preceding years, this paper examines how often the settlement procedure has been used and whether or to what extent the stated aims of the settlement procedure have been reached.

Object Restrictions in Sports after the ECJ's Decisions in ISU and Superleague. Forfatter: Bernadette Zelger.
Key points:

- The decisions of the ECJ in *ISU* and *Superleague* provide clarification regarding the notion of by object restrictions of competition in the intersection of sports and competition law.
- *Meca-Medina* only applies to conduct that is not qualified as restriction of competition by object. Restrictions by object can thus only be subject to an exemption according to Article 101(3) TFEU.
- In case a private body governing an entire sport (such as the International Skating Union or FIFA/UEFA) operates under a discretionary framework with no substantive criteria and detailed procedural rules that warrant predictability, objectivity, transparency, and non-discrimination, as well as merit proportionality, rules on prior approval, participation, and sanction qualify as object restriction of competition.
- This is so in order to warrant sporting competitions being based on equality of opportunity and merit, irrespective of the source of the regulatory power of the undertaking concerned, be it power stemming from the grant of exclusive or special rights, autonomous behaviour of a dominant undertaking, or a decision by an association of undertakings.

Application of the 'Commercial Ancillary Restraints' Doctrine to Non-compete Clauses Concluded Between Potential Competitors: Case C-331/21 EDP—Energias de Portugal. Forfattere: Pierre Goffinet og Laure Bersou.
Judgment of 26 October 2023, EDP - Energias de Portugal and Others, Case C-331/21, EU:C:2023:812. A non-compete clause between potential competitors, which constitutes a restriction by object, may still escape Article 101(1) TFEU based on the "commercial ancillary restraints" doctrine.

Fines for Gun-Jumping in EU Merger Control: Case C-746/21 P. Forfattere: Altice Susanne Zuehlke og Angelica Antoniadou.
Case C-746/21 P Altice Group Lux v Commission, EU:C:2023:836. The Court of Justice largely upheld fines imposed by the European Commission for violating the notification requirement and the stand-still obligation of the EU Merger Regulation.

Bundeskartellamt Gives Users of Google Services Better Control over their Data on the Basis of Section 19a of the German Competition Act, GWB (Germany). Forfattere: Sascha Dethof og Lea Josten.
In the first decision based on Section 19a GWB, the Bundeskartellamt analyses that Google, through the use and implementation of its data processing conditions, is engaging in a particularly harmful conduct that fulfils the criteria of Section 19a (2) sentence 1 no. 4a GWB. Google uses data processing conditions towards end users that provide for the possibility of cross-service processing of user data without giving the end-user sufficient choice in this respect. The decision is legally significant in particular due to the existing polarity of jurisdiction and claims between the German standard and the European standard of Art. 5 Digital Markets Act ('DMA'). The decision clarifies the existing exclusive competence of the European Commission (Commission) and the resulting tension between European and German law. The Commission's decision to designate Google as a gatekeeper within the meaning of the DMA significantly curtailed the competences of the Bundeskartellamt, meaning that the German authority was only responsible for deciding on the remaining Google services and these are only affected by the decision as long as the Commission has not (yet) decided on them.

UK Court of Appeal Confirms CMA Powers to Require Production of Documents from Non-UK Companies. Forfatter: Becket McGrath.
Key points:

- Since anticompetitive conduct is often international in scope, national competition authorities must frequently request potentially relevant information and documents from companies based outside of their jurisdiction, as part of an investigation of suspected infringements of their domestic competition law.
- At the start of an investigation by the UK Competition and Markets Authority ('CMA') into the return, dismantling, and recycling of end-of-life cars and vans, the German parent companies of Volkswagen and BMW challenged the CMA's jurisdiction to require them to produce documents and information each held in Germany, by means of formal information requests.
- According to the companies, the CMA lacked the jurisdiction to compel the production of documents held by companies based outside the UK, while European and German data protection laws prevented them from providing the requested information to the CMA voluntarily.

- Although the companies' arguments were upheld by the Competition Appeal Tribunal at first instance, the Court of Appeal supported the CMA's more extensive interpretation of its jurisdiction, confirming that its powers to require the provision of information and documents have extraterritorial reach and that all entities within an addressee undertaking are obliged to respond to a mandatory information request, regardless of where they are located.

Closing the Regulatory Gap? A Case Study on the Acquisition of a Semiconductor Producer under the EU Foreign Subsidies Regulation. Forfattere: Robin Vandendriessche og Caroline Buts.
Key points:

- The European Union (EU) has recently attempted to close the regulatory gap between third-country and EU state aid through the adoption of the Foreign Subsidies Regulation, empowering the European Commission to deal with distortions caused by foreign subsidies mainly in the fields of concentrations and public tenders.
- This article reflects on the ability of this regulation to restore the level playing field by conducting a case study on the economic effects of a particular Chinese subsidised acquisition of an EU-headquartered semiconductor producer in 2018.
- As government support involved in this acquisition was not necessarily a prerequisite for all the positive effects but did seem to be a necessary condition for most of the negative effects, the unnotified transaction seems to have considerable distortive potential.
- Although the Foreign Subsidies Regulation also entails a discretionary investigative tool, lower overall thresholds might have to be considered, especially in industries of strategic importance.

Anticompetitive Agreements in Labour Markets: a Survey of the most Recent Developments in EU Competition Law. Forfattere: Ana Sofia Rodrigues, Marta Rocha og Sónia Moura.
Key points:

- Labour antitrust has received increased attention by competition authorities worldwide.
- The EC Guidelines, from July 2023, on the applicability of Article 101 TFEU to horizontal co-operation agreements, adds wage-fixing agreements to the non-exhaustive list of agreements restricting competition by object.
- The EC Guidelines, from September 2022, on the application of EU competition law to collective agreements, explicitly refer that no-poach and wage-fixing agreements are likely to infringe Article 101 TFEU by object.
- Between April 2022 and November 2023, EU national competition authorities have issued decisions involving no-poach and wage-fixing agreements, pending final judicial review, and investigations are ongoing.

Artikler fra World Competition

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Artikler fra Antitrust Law Journal

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Artikler fra Communications Law

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Artikler fra Computer and Telecommunications Law Review

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Artikler fra Global Competition Litigation Review

Volume 17, issue 2, 2024:

The jurisdictional and systemic implications of the right to effective judicial protection of professional athletes and market access rights following the International Skating Union ruling of the Court of Justice of the European Union. Forfatter: Professor Francesco Rizzuto.
Considers International Skating Union v European Commission (C-124/21 P) (ECJ) on the organisation of sporting competitions by governing bodies, and athletes' rights to effective remedies in the national courts.

Ensuring adequate protection of legal professional privilege in competition law cases. Forfatter: Helene Andersson.
Discusses whether the European Commission's approach to competition investigations fails to provide the necessary scope of protection for privileged communications.

Competition enforcement and the labour market: too much too soon? Forfatter: Jeffrey C. Bank.
Compares the US and EU approaches to the enforcement of antitrust law in connection with employment, by way of wage-fixing, no-poach agreements, information exchange, and non-compete agreements.

Undertakings as creditors under competition law. Forfatter: Professor Dr Christian Kersting.
Comments on the German judgment in Bundesgerichtshof (Mattress Price Breaker) (KZR 39/21) on a claim by a cartel non-participant for losses caused by a boycott of itself and its sister companies which formed a single undertaking.

Unrestricted innovation? Procedural innovations in the Competition Appeal Tribunal. Forfatter: Sarina Williams.
Discusses novel court proceedings used by the Competition Appeal Tribunal to manage its caseload, including mini case management conferences, an expert-led approach, and practice directions.

Testing the waters - the rise of novel theories of abuse in the CAT opt-out class action regime. Forfatter: Simon Yeung.
Reviews the trend in collective proceedings for abuse of dominant position before the Competition Appeal Tribunal which challenge the actions of big tech companies and are based on novel causes of action, such as consumer protection, data protection, and environmental and social governance.

Arbitration/ADR: the General Court's and Advocate General Rantos's views on the compatibility of the ISU Arbitration Rules with EU competition law. Forfatter: Gordon Blanke.
Revisits International Skating Union v European Commission (T-93/18) (GC) and the Advocate General's Opinion, contrasting the ECJ ruling in the same case, on the sports governing body's recourse to the Court of Arbitration for Sport, Swiss Tribunal and Swiss law.

Artikler fra Market and Competition Law Review

Volume 8, no. 1, 2024:

The shifting regulation and competition interface. Forfatter: Max Huffman.
Keywords: Competition law, Market regulation, Labor antitrust, Artificial intelligence, Innovation.

Antitrust and market regulation, rather than being "flip sides of the same coin," populate a spectrum that ranges from a truly laissez faire economic system at one end to a command economy at the other. Competition policy and regulation have different strengths and will thus be preferred in different settings, as well as at different times in the chronology of industry growth.

While competition policy might be favoured early in the growth of an industry, when the efficient outcomes are unknown and unknowable, regulation is a preferred approach when the industry is mature, innovation has slowed, and gains come from operational efficiencies rather than technological changes. Their different strengths may also emerge independent of chronology: competition policy is a preferred market oversight mechanism when efficient outcomes are consistent with larger social, political, environmental – etc. – goals. Where efficient outcomes deviate from those, however, market regulation is the better alternative.

The reality of the regulation-competition interface belies the binary of these as alter- native approaches to market oversight. Competition policy may be more or less regulatory in nature and enforcers take on regulation-like approaches when their goals diverge from competitive equilibria. Competitive equilibria in labour markets are unlikely to produce worker protections that serve broader social goals. This is because labour markets reflect durable monopsony power, with workers locked into employment relationships and unable to bargain effectively. The resulting equilibrium will see firms that are both employers and producers favouring efficiencies in consumer markets, where they are more likely to encounter competition, over labour markets, to the detriment of workers.

Competition policy gives way to regulation as prohibitions on no-compete covenants and exemptions for labour organization intrude on marketplace competition. In a market of gig economy platforms, characterized by diffuse buyers, diffuse sellers, and a consolidated intermediary – the platform – which is protected by entry barriers including network effects and capital intensiveness, the competitive equilibrium will see surplus wealth gained by the platform. This outcome does not prevent substantial social benefits, including those realized by workers and consumers on the platform. For example, evidence suggests that the US-based gig platform Uber brought economic opportunity to developing world locations as underemployed workers became independent businesspersons and consumers had cheaper and safer means of transport. Regulating to protect consumers (safety regulation) and workers (minimum earnings regulation) can protect non-competition social goals including safety and equity of wealth distribution.

The market for artificial intelligence technologies is nascent, fast developing, and far from fully understood. This is also a market in which innovation is crucial, and comprehensive regulation would undermine the experimental process by which technologies are developed. But the unrestricted growth of this market presents risks that demand interventions. Regulation can establish parameters within which competition might flourish, through forbidding edge-case applications, encouraging standardization of technologies, and monitoring markets to identify enduring inequities early. Regulation and competition policy populate a spectrum of market oversight options, at the extremes operating individually and, in the heartland, playing a complementary role. As policymakers and enforcers continue to emphasize goals that competitive equilibria cannot achieve, regulation will play an increasingly important role.

(Too) many policies under one roof? About the integration of competition law enforcement and sectoral regulation within one authority. Forfatter: Anna Piszcz.
Keywords: Competition authorities, Functions, Institutional design.

The traditional institutional model of a competition agency has assumed entrusting competition protection to a single authority. Over time, more and more often national competition authorities are being entrusted not only with competition enforcement but also with other functions (tasks). And the tendency to increasingly entrust competition authorities with additional roles not related to competition policy may seem worrying, as there may be a risk of pushing competition protection to the background. This article is going to reflect upon the relevant changes after the enlargement of the European Union (2004) and the current situation of selected competition authorities in this context.

This contribution will explore the topic in relation to the main models of multifunctional competition authorities entrusted with sectoral regulation and examine authorities which combine competition enforcement with sectoral regulation in

infrastructure industries. The article will also take into account that public enforcement of the prohibition of unfair trading practices provided for in Directive 2019/633 ("UTP Directive"), and limited to the agrifood market, was assigned to competition authorities (in line with the European Commission's suggestion), which is the case of almost half of the EU Member States. It will attempt at the identification of advantages and disadvantages of entrusting competition authorities with additional sectoral regulation functions and discuss whether Directive 2019/1 ("ECN+ Directive") may serve as a cure for disadvantages of adding not related objectives, such as overwhelming numbers of tasks and lacking resources, including human resources or a relatively small part of budget dedicated to competition enforcement. The research methods employed in this article include, first, a doctrinal legal method, second, systemic and teleological approaches, and, last, a comparative analysis.

Not "big is bad" but "closed is bad"? Exploring dynamic competition in generative AI. Forfattere: Friso Bostoen, Lola Montero Santos og Anouk van der Veer.
Keywords: Dynamic competition, Antitrust, Innovation, Unbundling, Artificial intelligence.

Scholars have seized upon studies on economic concentration to revive the idea that "big is bad". A recent addition to the literature, by James Bessen, shares a concern for declining disruption rates but argues instead that "closed is bad". We review this debate, concluding that neither fully grapples with the dynamic competition paradigm. The theory of dynamic competition offers important nuances to current understandings of competition, and in particular the role of innovation, which we illustrate via a case study of generative AI. We then turn to policy measures, and in particular those under the "unbundling" umbrella, i.e., breaking ties, mandating interoperability, and imposing data sharing. Each of these measures is finding its way into the EU policy framework. We show that, though such measures can make sense in specific circumstances, the challenges – both conceptual and practical – are not to be underestimated. We build on our generative AI case study to highlight the opportunities and risks involved, which confirm the desirability of a case-specific approach.

Manipulation into unsustainable consumer choices as exploitative abuse of dominance. Forfatter: Beata Mäihäniemi.
This article oscillates around the intersection of sustainability and digital platforms, which is an increasingly important and complex area of study in which digital platforms can have both a positive and a negative influence. The interaction between sustainability and digital platforms is crucial at a time when the EU is promoting the twin transition in its economy, a process that entails focusing on both environmental sustainability and digitalization. Online users should have a chance to buy sustainable products and services through digital platforms. However, environmental issues are becoming more and more pressing, and users are more willing to, among others, compensate for their flight emissions, to buy organic food and to ensure the protection of endangered species. The following question arises: who is responsible for ensuring the sustainability of the products and services that are offered online? Is it consumers, who often feel that they want to be environmentally friendly but choose cheaper products over sustainable ones out of habit? Or is it the government and the EU, which are promoting the twin transition in the first place?

I argue that these responsibilities could be allocated through competition law. In particular, the article focuses on the possible manipulation of consumers into overconsumption or the purchase of unsustainable products and services, which could be classified as exploitative abuse of dominance. Consumer welfare (i.e., the well-being of consumers) would be enhanced if consumers could buy more sustainable goods and services or if they were not manipulated into overconsumption. Such a development would cohere with the recent attempts to broaden competition law into non-pricerelated goals that respond to societal needs for transformation (here, the sustainability transition in the face of the environmental crisis). This article is intended to answer the following question: how can different kinds of manipulation into the purchase of unsustainable products and services or overspending be classified as decreasing consumer welfare and, consequently, as exploitative abuses of dominance under EU competition law? For example, digital platforms often nudge consumers into specific behaviours that may not be in their best interests.

"Interested parties" versus unlawful State aid. State of play in CJEU's caselaw. Forfattere: Agata Jurkowska-Gomulka og Artur Salbert.
Keywords: Unlawful State aid, Interested party, Beneficiary of state aid, Regulation 2015/1589.

In case of unlawful State aid, Art. 24(2) of Regulation 2015/1589 guarantees the possibility to submit a complaint to "any interested party". The preamble to Regulation 2015/1589 even encourages the submission of such claims. Interested parties are defined by Art. 1(h) of this Regulation as "any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations". The fact that an entity belongs to one of the categories indicated in this provision (e.g., beneficiary or trade associations) does not determine its status of interested party – a key factor is proving that the

interests of a particular entity have been affected by the (potentially) unlawful aid. The concept has been developed in case law. Among many detailed issues in judgements delivered either on the basis of Regulation 2015/1589 or the preceding Regulation 659/1999, the CJEU has discussed conditions under which a status of interested party could be attributed to undertakings in no direct competition with a recipient of State aid. Special attention is drawn to a beneficiary of State aid as a potential "interested party" – this category of entities is mentioned in Art. 1(h) of Regulation 2015/1589, but a form that needs to be used in order to submit a complaint does not list a beneficiary as a subject entitled to submitting a complaint. The article presents a review of CJEU cases in this regard, and aims at defining the current state of interpretation of "interested party" that opens a gate for particular entities to submit a complaint.

Andre udenlandske artikler

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Murder on the dance floor - the Danish disco cartel. Forfatter: Christian Bergqvist. E.C.L.R. 2024, 45(7), 334-336.
Comments on the Danish Competition Council decision in ECIT Account A/S, fining a provider of services to nightclubs participating in a joint purchasing arrangement which precluded opening of proximate establishments. Considers the decision's compatibility with the EU horizontal guidelines.