Konkurrenceretlig Nyhedsoversigt nr. 94 / dækkende 26. juli 2024 – 26. august 2024

Indhold

1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Godkendelse på baggrund af en forenklet sagsbehandling af Salling Group A/S' erhvervelse af samtlige aktier i Skagenfood A/S.
Ved den anmeldte transaktion erhverver Salling Group de resterende 10 pct. af aktierne i Skagenfood og opnår dermed enekontrol over selskabet.
Læs mere
Dato: 07/08/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Brødrene A. & O. Johansen A/S' erhvervelse af Workwear Group ApS.
Ved transaktionen erhverver AO 100 pct. af ejerandelene og stemmerettighederne i Workwear Group. AO erhverver dermed enekontrol over Workwear Group.
Læs mere
Dato: 05/08/2024

Nyt fra Konkurrencerådet

Intet nyt.

Nyt fra Konkurrenceankenævnet

Intet nyt.

Nyt fra domstolene

Civilretlige afgørelser

Intet nyt.

Straffesager

Intet nyt.

Lovforslag i høring

Intet nyt.

Ny lovgivning

Intet nyt.

Nyt fra Ankestyrelsen

Intet nyt.

Andet

Intet nyt.

2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust & Cartels

Commission seeks feedback on draft antitrust Guidelines on exclusionary abuses.
The European Commission has launched a public consultation inviting all interested parties to comment on draft Guidelines on exclusionary abuses of dominance.

The draft Guidelines published today aim at reflecting the Commission's interpretation of the EU courts' case law on exclusionary abuses and the Commission practice. This will help increase legal certainty to the benefit of consumers, and businesses, as well as national competition authorities and courts.
In particular, the draft Guidelines provide guidance on various key issues concerning exclusionary abuses by dominant companies, including:

- The purpose of competition law enforcement and the concept of consumer welfare under EU law, including in relation to exclusionary abuses.
- The main principles applicable to the assessment of single and collective dominance.
- The application of general principles to determine if a conduct by a dominant company is likely to constitute an abuse and, in particular, on the concepts of “competition on the merits” and “exclusionary effects”.
- The evidence necessary to show that a conduct is capable of producing exclusionary effects. In particular, the draft Guidelines identify: (i) categories of conduct for which it is necessary to demonstrate the capability of producing exclusionary effects; (ii) categories of conduct that have a high potential to lead to exclusionary effects, and (iii) naked restrictions, which by their very nature lead to exclusionary effects.
- The substantive legal standard to establish a conduct's capability to produce exclusionary effects.
- The analytical framework applicable to certain types of conduct by dominant companies. The draft distinguishes between: (i) conduct subject to a specific legal test set out in EU case law (i.e. exclusive dealing, tying and bundling, refusal to supply, predatory pricing and margin squeeze); and (ii) conduct not subject to a specific legal test (i.e. conditional rebates, multi-product rebates, self-preferencing and access restrictions).
- The general principles applicable to the assessment of objective justifications that the dominant company may argue.

Læs mere
Dato: 01/08/2024

Mergers

Commission clears Bunge's acquisition of Viterra subject to conditions.
Bunge and Viterra are both vertically integrated global agribusinesses, active in the origination, trading and processing of agricultural products, with significant overlaps in the sector of oilseeds (i.e., rapeseed, soybean and sunflower seed).

The Commission's investigation showed that the acquisition, as initially notified, would have reduced competition in the markets for oilseeds and related products, including oilseed meals for animal consumption, crude oilseed oils and refined oilseed oils for human consumption or for biodiesel production. In particular, the transaction would have negatively affected competition in Central Europe where both parties are active across the whole supply chain.

The Commission found that the transaction would have resulted in a considerable concentration of oilseed processing capacity in Central Europe, with potential negative effects vis-à-vis farmers and downstream customers.

To address the Commission's competition concerns, the parties offered to divest the entirety of Viterra's oilseed businesses in Hungary and Poland and a number of logistical assets linked to these operations.
Læs mere
Dato: 01/08/2024

State Aid

Commission approves €5 billion German State aid measure to support ESMC in setting up a new semiconductor manufacturing facility.
The European Commission has approved, under EU State aid rules, a €5 billion German measure to support European Semiconductor Manufacturing Company ('ESMC') in the construction and operation of a microchip manufacturing plant in Dresden. ESMC is a joint venture between Taiwan Semiconductor Manufacturing Company ('TSMC'), Bosch, Infineon, and NXP. The measure will strengthen Europe's security of supply, resilience and digital sovereignty in semiconductor technologies, in line with the objectives set out in the European Chips Act Communication. The measure will also contribute to achieving the digital and green transitions.
Læs mere
Dato: 20/08/2024

Commission approves €99.5 million Romanian State aid measure to support Nokian Tyres' new zero CO2 emission tyre factory.
The European Commission has approved, under EU State aid rules, a €99.5 million (RON 495.2 million) Romanian measure in favour of Nokian Tyres. The aid will support the establishment of a new zero carbon dioxide emission factory for passenger car tyres in Oradea. The measure will contribute to the EU's strategic objectives relating to job creation, regional development, and to the green transition of the regional economy.
Læs mere
Dato: 13/08/2024

Commission approves €80 million Dutch State aid measure to support an innovative technology for the production of renewable hydrogen.
The European Commission has approved, under EU State aid rules, a €80 million Dutch measure to support Djewels B.V., a subsidiary of the hydrogen company HyCC B.V., in the demonstration of an innovative renewable hydrogen production technology. The measure will contribute to the development of renewable hydrogen production in line with the objectives of the EU Hydrogen Strategy and the European Green Deal.
Læs mere
Dato: 29/07/2024

Commission opens in-depth State aid investigation into €321.2 million German measure to restructure Condor.
The European Commission has opened an in-depth investigation to assess whether a German €321.2 million restructuring measure in favour of Condor is in line with EU State aid rules. The measure was initially approved in July 2021 by the Commission under the State aid Rescue and Restructuring Guidelines, but the Commission's decision was subsequently annulled by the judgment of the General Court of 8 May 2024.
Læs mere
Dato: 29/07/2024

Commission approves €998 million Dutch State aid scheme to support renewable hydrogen production.
The European Commission has approved, under EU State aid rules, a €998 million Dutch scheme to support the production of renewable hydrogen. The measure aims to contribute to the development of renewable hydrogen in line with the objectives of the EU Hydrogen Strategy and the European Green Deal. The scheme will also contribute to the objectives of the REPowerEU Plan to reduce dependence on Russian fossil fuels and accelerate the green transition.
Læs mere
Dato: 29/07/2024

Commission approves €1.2 billion Spanish State aid scheme to support investments in the production of renewable hydrogen to foster the transition to a net-zero economy.
The European Commission has approved a €1.2 billion Spanish scheme to support investments in the production of renewable hydrogen to foster the transition to a net-zero economy. The scheme was approved under the State aid Temporary Crisis and Transition Framework ('TCTF'), adopted by the Commission on 9 March 2023 and amended on 20 November 2023 and on 2 May 2024.
Læs mere
Dato: 26/07/2024

Commission approves €2 billion Dutch measure to support production of medical radioisotopes for cancer diagnosis and treatment.
The European Commission has approved, under EU State aid rules, a €2 billion Dutch measure to support the PALLAS project aimed at producing medical radioisotopes for cancer diagnosis and treatment. The measure contributes to ensuring security of supply of essential and live-saving medicines in line with the Pharmaceutical Strategy for Europe.
Læs mere
Dato: 26/07/2024

Commission approves €1.5 billion French State aid scheme to support sustainable biomethane production to foster the transition to a net-zero economy.
The European Commission has approved a €1.5 billion French scheme to support the production of sustainable biomethane to foster the transition towards a net-zero economy. The scheme was approved under the State aid Temporary Crisis and Transition Framework ('TCTF') adopted by the Commission on 9 March 2023 and amended on 20 November 2023 and on 2 May 2024.
Læs mere
Dato: 25/07/2024

Commission approves €750 million Dutch State aid scheme to support the decarbonisation of industrial processes to foster the transition to a net-zero economy.
The European Commission has approved a €750 million Dutch scheme to support investments in the decarbonisation of industrial production processes to foster the transition towards a net-zero economy. The scheme was approved under the State aid Temporary Crisis and Transition Framework ('TCTF') adopted by the Commission on 9 March 2023 and amended on 20 November 2023 and on 2 May 2024.
Læs mere
Dato: 25/07/2024

Andet

Commission staff working document: Initial clarifications on the application of Article 4(1), Article 6 and Article 27(1) of Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market.
This Staff Working Document consists of questions and answers providing initial clarifications on the application of Article 4(1) of Regulation (EU) 2022/25601 concerning the existence of a distortion in the internal market caused by a foreign subsidy, the application of the balancing test set out in Article 6 of Regulation (EU) 2022/2560, and the assessment of a distortion in a public procurement procedure set out in Article 27(1) of Regulation (EU) 2022/2560.
Læs mere
Dato: 26/07/2024

Nyt fra EU-domstolen

Domme

C-697/22 P – Koiviston Auto Helsinki mod Kommissionen.
Nøgleord:

Appel – statsstøtte – SA.33846 (2015/C) (ex 2014/NN) (ex 2011/CP) – relevant element efter offentliggørelsen af afgørelsen om at indlede den formelle undersøgelsesprocedure – identifikation af støttemodtageren – forpligtelse til at offentliggøre en ændret indledningsafgørelse – støttemodtagerens ret til at gøre sine bemærkninger gældende – væsentlig formforskrift – uforenelighed med det indre marked – tilbagesøgning af støtten pålagt af Europa-Kommissionen – beløb, der skal tilbagesøges – den berørte medlemsstats kompetence

Tvist:

I perioden 2002-2012 traf Helsingfors by forskellige foranstaltninger til fordel for HKL-Bussiliikenne [Oy] 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 [Oy]. 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 Europa-Kommissionen, til hvilken klage 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 om foranstaltning SA.33846 (2015/C) (ex 2014/NN) (ex 2011/CP) – Finland – Helsingin Bussiliikenne Oy (EUT 2015, C 116, s. 22, herefter »indledningsafgørelsen«) 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 […] 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. Disse dokumenter omfattede ligeledes en earn-out-mekanisme, ifølge hvilken køberen forpligtede sig til at indbetale en bonus på den samme spærrede konto til sælgeren, hvis det aftalte overskudsmål blev overgået.

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.

Dom:

Den Europæiske Unions Rets dom af 14. september 2022, Helsingin Bussiliikenne mod Kommissionen (T-603/19, EU:T:2022:555), ophæves. 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. Europa-Kommissionen bærer sine egne omkostninger og betaler Koiviston Auto Helsinki Oy's omkostninger såvel i forbindelse med sagen i første instans som i forbindelse med appelsagen.
Læs mere
Dato: 29/07/2024

C-298/22 – Banco BPN mod BIC Português m.fl.
Nøgleord:

Præjudiciel forelæggelse – konkurrence – karteller – konkurrencebegrænsning – forbuddet mod karteller – artikel 101 TEUF – aftaler mellem virksomheder – konkurrencebegrænsende formål – udveksling af oplysninger mellem kreditinstitutter – oplysninger om forretningsbetingelser og produktionstal – strategiske oplysninger.

Tvist:

Denne anmodning er indgivet i forbindelse med en tvist mellem flere kreditinstitutter og Autoridade da Concorrência (konkurrencemyndighed, Portugal) (herefter »konkurrencemyndigheden«) vedrørende sidstnævntes afgørelse om at pålægge disse institutter en bøde for en overtrædelse af de nationale konkurrenceregler og artikel 101 TEUF, som bestod i, at institutterne deltog i en samordnet praksis, der havde til formål at begrænse konkurrencen på markedet for lån til finansiering af fast ejendom, markedet for forbrugslån og markedet for lån til virksomheder, og i form af en udveksling af oplysninger om aktuelle og fremtidige vilkår for transaktionerne, bl.a. rentespænd og risikovariabler, samt om individuelle produktionstal for deltagerne i denne udveksling.

Dom:

Artikel 101, stk. 1, i traktaten om Den Europæiske Unions funktionsmåde skal fortolkes således, at en omfattende gensidig og månedlig udveksling af oplysninger mellem konkurrerende kreditinstitutter, som er foregået på markeder med en høj koncentration og adgangshindringer, og som vedrører de gældende betingelser for transaktioner, der gennemføres på disse markeder, herunder aktuelle og fremtidige rentespænd og risikovariabler samt individualiserede produktionstal for deltagerne i denne udveksling, for så vidt som de herved ændrede rentespænd i hvert fald er dem, som disse institutter vil anvende i fremtiden, skal kvalificeres som havende et konkurrencebegrænsende formål.
Læs mere
Dato: 29/07/2024

Forslag til afgørelse

Intet nyt.

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.

Andet internationalt nyt

UOKiK Report – Polish beer and hops market.
UOKiK has examined the characteristics, relationships, and level of competition in the Polish beer and hops industry. The biggest problems it experiences include the fragmentation of hop growers and the underdeveloped hop processing sector. In addition to the diagnosis, the report includes recommendations for the industry.
Læs mere
Dato: 21/08/2024

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-ret og Menneskeret

Intet nyt.

Anden dansk og nordisk litteratur

Intet nyt.

4 | LITTERATUR (UK)

Artikler fra European Competition Law Review

Volume 45, issue 9, 2024:

"Picking mergers": the challenge of competitiveness in competition policy (Editorial). Forfatter: Professor Nicolas Petit.
Notes the impact of the introduction of guidelines which redirect competition policy towards "competitiveness", introduced by European Commission President Von der Leyen in July 2024.

Antitrust aspects of bidding consortia in M&A transactions: to jointly bid or not to jointly bid, that is the question. Forfatter: Dr René Galle.
Considers competition concerns associated with joint bidding consortia in merger transactions. Examines relevant guidance from competition authorities, its practical application, and the scope for consortia to trigger merger filing obligations. Sets out recommendations for bidding consortia.

Sustainable divergence between the UK and the EU - the fair share principle in practice. Forfatter: Dr Nicole Rosenboom.
Examines how the UK and EU rules on the prohibition of agreements restricting competition diverge in respect of sustainable collaborations. Applies both approaches to a hypothetical scenario, and details how their different approaches can potentially result in different outcomes.

Merger control without acquisition of control? Limits to the expansion of merger review after Towercast. Forfatter: Riccardo Fadiga.
Discusses how Towercast SASU v Autorite de la concurrence (C-449/21) (ECJ) expanded the scope of the Commission's merger review powers, its implications for "control" under Regulation 139/2004, and why further expansion to encompass acquisition of non-controlling shareholdings should be resisted.

Citation network analysis: exploring its potential in the study of competition law. Forfatter: Alexandru Şotropa.
Examines how network citation analysis might be used in competition law, highlighting its key elements and its strengths and shortcomings. Applies such analysis to Commission decisions in abuse of dominance cases, including the part played in the network by citation of the most central decisions.

The essential facilities doctrine: how does it intersect with the Digital Markets Act? Forfatter: Fatma Ceren MORBEL.
Reviews the evolution of the essential facilities doctrine in EU competition law, including the approach adopted towards it in digital market cases such as Re Google Search (Shopping) (AT.39740) (CEC). Considers how the doctrine relates to provisions of Regulation 2022/1925 (Digital Markets Act).

Austria: anti-competitive practices - investigation - abuse of dominant position. Forfatter: Kuebra Tevek-Yilmaz.
Notes the Austrian Federal Competition Authority's application to the Cartel Court for the imposition of a fine against Brau Union, the country's largest brewer, and its parent, Heineken International BV, following an investigation into complaints of conduct including abusive exclusionary conduct.

Belgium: mergers - merger control (Case Comment). Forfatter: Peter Wytinck.
Notes the Belgian Competition Authority ruling in Proximus / EDPnet, applying the principles of Towercast SASU v Autorite de la concurrence (C-449/21) (ECJ) to assess whether a telecommunications merger was exempt from merger control notifications, and identifying their other potential applications.

Canada: mergers - merger control (Case Comment). Forfatter: Kaeleigh Kuzma.
Notes the Canadian Competition Bureau ruling in Bell Media Inc / Outedge Media Canada LP, involving a consent agreement relating to a proposed merger in the outdoor advertising services market, and requiring divestiture of 669 advertising displays in five markets.

Canada: competition - legislation (Legislative Comment). Forfatter: Kaeleigh Kuzma.
Highlights the 20 June 2024 commencement of significant amendments to Canada's Competition Act, including those relating to merger review, abuse of dominance, private enforcement, drip pricing and greenwashing.

Czech Republic: mergers - merger control (Case Comment). Forfatter: Tomáš Fiala.
Highlights the Czech Competition Office ruling in EP Energy Trading / Gazela Energy as, fining an energy company around EUR 750,000 for gun jumping in respect of its merger with a gas and electricity distributor, without prior approval. Notes the settlement procedure used to reduce the fine.

Denmark: anti-competitive practices - judgment (Case Comment). Forfatter: Jens Munk Plum.
Comments on a Danish Eastern High Court decision, a competitor's private enforcement claim against Loomis and Bankernes Kontantservice A/S for anti-competitive conduct in the market for bank and retail cash handling services, alleging exclusivity and abuse of dominance by predatory pricing.

European Union: anti-competitive practices - judgment (Case Comment). Forfatter: Prof. Bruce Wardhaugh.
Notes European Commission v Deutsche Telekom AG (C-221/22 P) (ECJ) on whether the Commission was obliged to pay default interest on a fine it had collected, but subsequently refunded, to the undertaking concerned. Details the rate of interest payable on fines that are later annulled.

Ireland: Foreign Subsidies Regulation - legislation (Legislative Comment). Forfatter: Dr Vincent J G Power SC.
Highlights Irish legislative measures implementing EU Regulation 2022/2560 (Foreign Subsidies Regulation), and key provisions on the appointment of administrative inspectors, their powers, the conduct of inspections, the granting of warrants by district courts, and the range of potential offences.

Netherlands: mergers - merger control. Forfatter: Jotte Mulder.
Notes the Dutch Competition Authority finding that a proposed merger in the pallet vendor market between Foresco Packaging NV and its smaller competitors DWP and Vierhouten needed further investigation, and its call for additional powers to investigate small mergers below the notification threshold.

Poland: anti-competitive practices – investigation. Forfatter: Prof. Agata Jurkowska-Gomułka.
Notes the Polish Competition Authority's dawn raids on companies in the video games and mobile phones markets, including Playstation Store, Steam and Xiaomi, to investigate alleged anti-competitive practices involving the digital distribution of games and resale price maintenance of mobile phones.

Romania: anti-competitive activities – investigation. Forfatter: Cristina de Jonge.
Notes key investigations and unannounced inspections by the Romanian Competition Council, aimed at alleged anti-competitive practices and unfair competition in sectors including the electricity meter reading market, the archival services to pensioners market and the communications equipment market.

Romania: mergers - merger control (Case Comment). Forfatter: Cristina de Jonge.
Notes the Romanian Competition Council ruling in Veolia Romania Solutii Integrate SA / Nisal SRL, approving a merger in the utility and infrastructure sectors on the grounds that it presents no significant obstacles to effective competition.

South Africa: competition. Forfatter: Natalia Lopes.
Reviews significant competition law developments in Africa, including the proposed Common Market for Eastern and Southern Africa (COMESA) Competition and Consumer Protection Regulations, and the progress of competition policy in Egypt, Kenya, Uganda and South Africa to reflect market dynamics.

Spain: mergers - merger control (Case Comment). Forfatter: Pedro Callol.
Highlights the Spanish National Competition and Markets Commission ruling in Compania Transmediterranea SA / Naviera Armas, fining a company EUR 450,000 for breach of a merger condition. Notes the factors leading to a reduction of the original fine from EUR 750,000.

Spain: mergers - merger control (Case Comment). Forfatter: Pedro Callol.
Highlights the Spanish National Competition and Markets Commission ruling in KKR Generalife, imposing a fine of EUR 683,322 on a fertility clinic company for gun-jumping in a merger transaction, where over-reliance was placed on the seller's unverified financial data.

Sweden: unfair competition - judgment (Case Comment). Forfatter: Stefan Perván Lindeborg.
Notes the Stockholm Administrative Court ruling in Everfresh AB v Swedish Competition Authority on whether a SEK 5 million fine imposed on a fruit and vegetable wholesaler for using an unfair trading method was justified, or whether grounds existed for reducing it.

Turkey: anti-competitive practices - investigation (Case Comment). Forfatter: Dr. Gönenç Gürkaynak, Esq.
Notes the Turkish Competition Board ruling in Dogus Otomotiv Servis ve Ticaret AS, refusing to grant negative clearance or an exemption to a vehicle distributor's proposed recommendation of employee salary levels to dealerships, with the aim of attracting the best-qualified personnel.

United Kingdom: competition - legislation (Legislative Comment). Forfatter: Adrian Doerr.
Reviews key features of the Digital Markets, Competition and Consumers Act 2024, including its ex-ante regulatory regime for elements of the digital market, and its main reforms to merger control, market investigations, the territorial reach of UK consumer law, and consumer protection.

United States: anti-competitive practices – regulation. Forfatter: Anthony P. Badaracco.
Notes the ongoing US court challenges to a rule introduced by the Federal Trade Commission, largely prohibiting employee non-compete agreements. Details key features of the rule, including its sale of business exception, and the main elements of the legal challenges.

Artikler fra European Competition Journal

Volume 20, issue 2, August 2024:

It ain't over until it's over – when do infringements of EU competition law end? Forfatter: Koivusalo, Jussi.
The duration of infringements of Articles 101 and 102 TFEU has significant implications on the enforcement of those rules and those subject to enforcement. This article examines the European Court of Justice's case law on the assessment of the duration of an infringement of Article 101 TFEU after the conduct constituting the infringement has ended. While earlier case law focused on continuing market conduct corresponding to the original infringing conduct, more recent case law appears to bring forth an approach centred on the restriction of competition resulting from the conduct. The judgment in Kilpailu- ja kuluttajavirasto suggests that a complete assessment of an infringement's duration should consider the scrutinized conduct's restrictive effects on the competition that it distorts. That judgment also suggests that any price effects or other damages suffered by the infringers' customers do not affect the infringement period's length.

Multiplicity of tools for antitrust and consumer protection in digital markets: the Italian experience and the road ahead. Forfattere: Calini, Clara & Iossa, Elisabetta.
This article discusses the role of national competition authorities in the digital sector in the lights of new legislative initiatives in Europe. It argues that the availability of multiple tools offers new opportunities to balance objectives such as flexibility, harmonization, timeliness and legal certainty, helping to enhance effectiveness. Further, it discusses the recent enforcement experience of the Autorità Garante della Concorrenza e del Mercato (AGCM), which has the dual mandate to enforce competition and consumer protection rules in Italy. The AGCM has used antitrust tools to empower consumers with choice, through a number of landmark digital cases on issues related to access and visibility in online marketplaces, refusal to deal and interoperability, data value and portability, privacy and advertising, and unfair negotiations. The AGCM has used consumer protection tools to guide consumers in the selection process, concluding numerous digital investigations on online architecture, misleading information, dark patterns and choice pressure.

Attacking concentration: market power in the digital space. Forfattere: Smith, Rhonda & Healey, Deborah.
Increasing market concentration has become a topical issue in competition law worldwide. This article explores how firms, especially digital platform businesses, increase market concentration which may facilitate entrenched market power and anti-competitive conduct in their upstream or downstream markets. It considers in an Australian context two specific ways in which the power of a dominant firms including digital platforms may be constrained. The first is allowing the parties with lesser market power to collectively bargain, which can redress the imbalance in bargaining power to make the market work more effectively. A second and related option is the introduction of mandatory codes of conduct, which may be suitable in markets where perennial problems with market power imbalances exist. Australian experience suggests that these options can assist markets to function more effectively, and they may provide additional flexibility for other jurisdictions.

Unmasking excessive pricing: evolution of EU law on excessive pricing from United Brands to Aspen. Forfatter: Marinova, Miroslava.
It has been argued that the test for excessive pricing set out in United Brands is vague in a number of aspects and subsequent judgments of the EU courts have not provided much clarity on the matter. This article examines the evolution of the EU case law on excessive pricing for the last four decades including the most recent excessive pricing case investigated by the European Commission in the Aspen case. In particular, the article discusses the important question of what constitutes an excessive price that is "unfair in itself" and the question of how economic value is to be assessed. The article concludes that, although the abuse of unfair excessive pricing is likely to remain a difficult area for regulators to handle, the Commission's commitment decision in Aspen, despite the fact that it cannot change or replace judicial decisions, provides very important clarification of the legal test for excessive pricing.

When should EU merger assessment address privacy? The conditions for addressing privacy issues under the EU merger control regulation. Forfatter: Klein, Lilian.
The advent of digital companies has brought benefits to society. Nevertheless, the digital era poses significant risks to consumers' privacy. The combination, through mergers, of enormous datasets could raise further privacy concerns. It has been much discussed whether and how consumer privacy concerns should be introduced within merger assessment. This paper approaches this issue from another perspective and reflects upon the circumstances under which the EU Merger Control Regulation (EUMR) has a role to address privacy issues. Accordingly, this paper clarifies the conditions that must be satisfied in order for privacy issues to fall within the EUMR's ambit. First, privacy should be a parameter of competition on the market and second, there must be a causal link between the merger and privacy deterioration. Following this, the paper turns to critically analyse the Commission's treatment of privacy issues in objectively selected mergers involving some of the most powerful digital companies.

Full compensation and the volume effect: assessing different policy options. Forfattere: Weber, Franziska & van Wijck, Peter.
According to the Damages Directive victims of infringements of competition law are entitled to full compensation. To achieve this goal overcharges, passing-on, and volume effects should play a role in the calculation of damages (for any purchaser who is not yet the final consumer). Whereas the Damages Directive promotes the passing-on defence for the defendants, it does not regulate volume effects in depth. The computation of these effects requires information on counterfactual prices and quantities. Since this information cannot be observed, the size of the volume effect tends to be uncertain. This paper discusses policy-options that aspire to bring compensation closer to full compensation, given uncertainty about the size of the volume effect. Based on the maximin-principle, a principle for decision-making under uncertainty, not allowing a passing-on defence appears to be an attractive option since this may lead to the minimization of the maximum gap between actual and full compensation.

FRAND determination under the European SEP Regulation Proposal: discarding the Huawei framework? Forfatter: Colangelo, Giuseppe.
As part of the recent proposal for a regulation that would overhaul the entire standard essential patents licensing system (SEP Proposal), the European Commission has envisaged a pre-trial mandatory FRAND determination by a conciliator. The paper investigates the relationship between the FRAND determination process under such a proposal and the test developed by the European Court of Justice (CJEU) in Huawei v. ZTE, which represents the current guiding framework for SEP licensing negotiations in the EU. The paper aims at demonstrating that even, if the SEP Proposal were not to displace Huawei, it endorses an anti-injunction approach which is inconsistent with the CJEU's stance and is essentially triggered by the German case law.

Digital dominance: assessing market definition and market power for online platforms under Article 102 TFEU. Forfatter: Knapstad, Tone.
The traditional, price-focused antitrust tools for assessing dominance under Article 102 TFEU and merger control are challenged by the business models and features of multisided digital platforms. This article demonstrates the importance of data in digital markets and how data enable the utilization of network effects and economies of scale in a manner that challenges the traditional dominance evaluation. Based on this, the article systematizes the solutions to the challenges caused by decreased accuracy of price-based tools through an analysis of various approaches to the issue. It is argued that potential competition should be emphasized more strongly throughout the dominance assessment and that different approaches can be chosen based on the case at hand. Thus the article contributes to the development of the dominance analysis for digital markets with a thorough overview of possible solutions and ties it to the proposed renewal of the Market Definition Notice.

Digital merger control: adapting theories of harm. Forfatter: Robertson, Viktoria H. S. E.
The rising concentration in digital platform markets raises the question to what extent traditional merger control is effective in these market environments. This contribution sheds a light on ways in which national competition authorities throughout the European Union and in the United Kingdom have adapted their analyses to the specific characteristics and complexities of digital markets. Through detailed case studies, I offer insights into ways in which horizontal, vertical and conglomerate theories of harm were made relevant to digital markets. At the same time, the case analysis shows areas in which competition law should further develop theories of harm in line with the insights into these market environments, particularly as regards ecosystem theories of harm.

Interplay between Amazon store and logistics. Forfattere: Andreoli-Versbach, Patrick & Gans, Joshua.
This paper examines the antitrust investigations by the European Commission (AT.40703 – Amazon Buy Box) and Italian Competition Authority (A528-FBA AMAZON), and the regulatory proceeding by the Italian Authority for Communications and Postal Services (AGCom's resolution 94/22/CONS), surrounding Amazon's Store, and the interplay with its logistics and delivery services. While these authorities have raised concerns about Amazon's alleged "self-preferencing", rapid growth, and its alleged ability to leverage its (upstream) e-commerce market power to strengthen its position in (downstream) logistics services, this paper highlights alternative perspectives that are often overlooked or neglected. To achieve a comprehensive understanding of Amazon's conduct related to the above-mentioned investigations, we consider its business model, monetisation strategy, and underlying incentives. By delving deeper into the Amazon Store and its connection to logistics services, we argue that the allegations do not fully capture the evidence surrounding Amazon's practices.

The new regulation of telecommunications. The single voice of the European and national decision maker. Forfatter: Niola, Francesca.
The essay explores the challenges and opportunities presented by the new European electronic communications code (EU Directive 2018/19712) within the context of the European strategy for the digital market. It discusses the evolution of digital platforms, emphasizing their significance as information intermediaries. The concept of "netizenship", or digital citizenship, and its cultural relevance in the modern era is explored. The document also highlights the importance of algorithmic transparency and the evolution of privacy in the age of Big Data. The issue of digital sovereignty is addressed, and the urgency for enhanced data protection in an increasingly connected world is underscored.

The impact of search engine data sharing on competition and consumer welfare. Forfatter: Martens, Bertin.
Search engines match user queries with webpages. Search efficiency, increases when data-driven network effects attract more users and generate economies of scale and scope in data aggregation. Network effects enhance user welfare but also trigger antitrust concerns because they may "tip" the market towards a single dominant search engine – Google Search. The EU Digital Markets Act imposes an obligation on very large gatekeepers search engines to share their user data with smaller search engines to facilitate market entry and competition. The available empirical literature on search engine efficiency shows that asymmetric data sharing, from larger to smaller search engines, may increase competition but reduce user welfare because it fragments the user data pool that is crucial for efficiency, in particular for rare queries. Tension between competition and user welfare can be overcome by symmetric and mutual data sharing between all search engines, irrespective of market share.

Artikler fra Journal of Competition Law and Economics

Intet nyt.

Artikler fra Journal of Antitrust Enforcement

Intet nyt.

Artikler fra Journal of European Competition Law and Practice

Volume 15, issue 4, June 2024:

How to Fix a Failing Art. 102 TFEU: Substantive Interpretation, Evidentiary Requirements, and the Commission's Future Guidelines on Exclusionary Abuses. Forfattere: Heike Schweitzer & Simon de Ridder.
Key points:

- The duration of adversarial Art. 102 proceedings before the Commission has significantly increased in recent years, such that an effective deterrence and protection competition is no longer ensured.

- The case law on Art. 102 TFEU is partially unclear and incoherent; future guidelines should offer a conceptually coherent framework and address the dysfunctionalities of public enforcement.
- In support of the endeavour, we propose an interpretation of Art. 102 TFEU that we consider to be in line with the case law and with a 'workable effects-based approach'.
- A speedier enforcement presupposes a clarification of the law of evidence, in particular with a view to proving potential anticompetitive effects; in this vein, we identify settings in which potential anticompetitive effects may be inferred, or in which a 'quick look' may suffice.

Of Balance in Mergers: The Judgment of the Court of Justice in Case C-376/20 P Commission v CK Telecoms. Forfatter: Daniele Calisti.
Key points:

- The CK telecoms judgment is a seminal decision by which the Court of Justice, in its first ruling on gap cases, reaffirmed and developed its earlier case-law on mergers under a systematic framework.
- The cornerstone of the Court's approach is the balance set by the Merger Regulation, underpinned by a principle of neutrality when assessing the compatibility of any concentration with the internal market.
- The Court reset the bar of the standard of proof to a balance of probabilities, reversing the General Court's approach.
- The judgment also pointed at a broader balance in enforcement between the Commission and merging Parties as to the burden of proof, and clarified the boundaries of the institutional balance between the Commission and EU Courts.

The C-272/22 Volkswagen Case: Another Piece of the ne bis in idem Puzzle. Forfattere: Tommaso Salonico & Cecilia Carli.
The Court of Justice suggests that the ne bis in idem principle precludes the maintenance of a fine imposed on Volkswagen AG by the Italian Antitrust Authority for unfair commercial practices, providing guidelines on the application of the principle and its limitations in instances where prosecuting authorities in different EU Member States are responsible for enforcing different regulatory frameworks.

Tariffs in the Legal Professions and Article 101 TFEU: Cases C-128/21 Lietuvos notarų rūmai and C-438/22 Em Akaunt. Forfattere: Giuseppe Scassellati-Sforzolini & Alfonso Cardarelli.
The European Court of Justice has clarified that the rules of a notaries professional organisation laying down the methods for calculating notarial fees and the decisions of a professional association of lawyers fixing the minimum amount of lawyers' fees are restrictions of competition 'by object' under Article 101(1) TFEU.

Reviewing Mergers Under Article 102 TFEU: Proximus/EDPnet (Belgium) Forfatter: Friso Bostoen.
Key points:

- With *Proximus/EDPnet*, the Belgian Competition Authority (BCA) initiated the first *ex post* review of a merger under Article 102 TFEU since the *Towercast*judgment.
- In *Towercast*, the European Court of Justice left open certain questions relating to the legal test for *ex post* merger review, the preference for behavioural over structural remedies, and the possibility of double assessment.
- The BCA offered its own interpretation, supporting a legal test aligned with that of *ex ante* merger control, the appropriateness of structural remedies, and the impossibility of double assessment by competition authorities.
- Whilst the interpretation is helpful, the *Towercast* case law would benefit from further clarification via practice or, more authoritatively, preliminary ruling.

A New Dawn in Czech RPM Vertical Enforcement? The Courts Deliver a Landmark Judgment in the BABY DIREKT Case. Forfattere: Robert Neruda & Robert Nersesjan.
Key points:

- Following the rulings of the Czech courts (Czech Supreme Administrative Court and the Regional Court in Brno) in the *BABY DIREKT* resale price maintenance case, the Czech Competition Authority will have to enumerate in its decisions each individual infringement (agreement) that it considers part of the continuous infringement and link it to a specific piece of evidence proving that it fulfils all elements of the resale price maintenance agreement, especially a 'concurrence of wills'.
- The Czech Supreme Administrative Court based its ruling, *inter alia*, on the *Super Bock* case and effectively ended the '*Binon* and *Pronuptia* era', *i.e.* a rigid and overly formalistic approach to public resale price maintenance enforcement.

- In doing so, it has effectively increased the standard of proof in these cases, and it will probably lead to the Czech Competition Authority looking for ways to secure more evidence in its resale price maintenance cases.
- An obvious solution is to include the buyers who participated in the agreements in the proceedings, extend sanctions for resale price maintenance to them, and invite them to apply for a leniency.

Ofcom Refers the Market for Cloud Infrastructure Services to the CMA for an In-Depth Competition Probe. Forfattere: Fergal Farragher & Tania Van den Brande.
Key points:

- Cloud computing is transforming the way businesses operate and it enables technological innovation.
- Given the importance of cloud to the UK economy, it was a priority for Ofcom to understand whether competition is working well in this sector.
- Ofcom launched a market study in 2022, which identified several barriers that make it hard for customers to switch or use more than one cloud provider.
- Ofcom is concerned that these barriers risk limiting competition, and has therefore referred the market for an in-depth investigation by the CMA.

Ecosystem Theories of Harm in Merger Enforcement: Current Direction and Open Questions. Forfattere: Eliana Garces, Olga Kozlova Guglielmi & Devin Reilly.
Key points:

- The European Commission's decision blocking Booking's acquisition of eTraveli is believed to be the first merger prohibition on the grounds of an 'ecosystem theory of harm' in the digital space.
- Regulators in Europe have been questioning whether economic relationships across the different products or services supplied by large platforms—referred to as 'digital ecosystems'—could result in the entrenchment of any pre-existing market dominance or the creation of barriers to entry in one or more of the markets comprising the ecosystem.
- Although little guidance has been provided to date on how European regulators may articulate their thinking on digital ecosystems in merger control, clues can be found in the EC's press release announcing the *Booking/eTraveli* decision, as well as in several previous investigations by the EC and recent policy papers and statements.
- Regulators, firms, and practitioners will need a better understanding of the factors that turn demand- and supply-side linkages across products or services in a digital ecosystem into a competitive concern after an acquisition, as well as guidance on the appropriate treatment of efficiencies and remedies.

Abuse of Dominance under Article 102 TFEU: a Survey on 2023. Forfattere: Massimiliano Kadar, Johannes Holzwarth & Virgilio Pereira.

- In 2023, the Commission published the Article 102 package, amending the 2008 Guidance Paper and announcing that it would start working on the very first guidelines on exclusionary abuses of dominance.
- The law on the abuse of dominance was further shaped by judgments of the Union Courts, notably in *Meta* and *Superleague*, which gave new impetus to the relevance of 'competition on the merits' and supported the use of different analytical templates depending on the type of conduct at issue, including as regards conduct that is by its very nature likely to depart from competition on the merits, such as the conduct in *Lithuanian Railways*.
- The Union Courts also provided further insights into the role of the as efficient competitor test, namely in *Unilever*, and the substantive legal tests governing various forms of restrictions to competition, while other noteworthy developments in the case law of the Union Courts concerning Article 102 of the Treaty of the Functioning of the EU ('TFEU') unfolded in relation to the Union's multilevel enforcement system, addressing *inter alia* questions of competencies (*Towercast*), cooperation within the European Competition Network ('ECN') (*Amazon*), and private enforcement.
- Looking ahead, 2024 has the potential to be another remarkable year for Article 102 TFEU, not only due to the important cases pending before the Union Courts but also because several investigations by the competition authorities are likely to hit crucial milestones, while in any case, it will be the year of the much anticipated publication of draft guidelines on exclusionary abuses of dominance.

Artikler fra World Competition

Volume 47, issue 3, 2024:

Post Danmark: More than Just Another Serial Infringer. Forfatter: Christian Bergqvist.
The Danish Postal incumbent's, Post Danmark, struggle to acclimatize to a market without special rights has yielded epic competition cases such as Post Danmark I and Post Danmark II. While it is tempting to label Post Danmark as a serial infringer, it is fundamentally a company that was slow in accepting that letter mail presented a dying business case and viewed other services as being merely and capable of being priced accordingly. The extreme fall in letter volumes has made this position untenable, explaining the company's financial collapse and persistent clashes with competition law. Studies of Post Danmark's 'troublesome' relationship with competition law offer insights into the treatment of multi-product companies under competition law the need to police their allocation of costs and the consequences of failing in this.

The GDPR-DMA Nexus: Is the GDPR an Achilles Heel for the DMA's Data-Related Obligations? Forfatter: Aleksandra Wierzbicka.
In the ever-expanding digital realm, a systematized and coherent legal framework regulating data-driven competition has emerged as a paramount concern in the European Union. At the heart of this intricate puzzle lie the General Data Protection Regulation (GDPR) and the Digital Markets Act (DMA) governing data protection and market contestability respectively. While the 'without prejudice' clause enshrined in the DMA seeks to harmonize their coexistence, the true extent of their compatibility and complementarity remains elusive. The juxtaposition of these two legislative pillars unveils nuanced conflicts and potential vulnerabilities at their intersection. If disregarded, these glaring blind spots might become an Achilles heel of the DMA and risk to weaken the DMA's data-related ambitions.

Korean Competition Law Enforcement: Recent Developments. Forfatter: Kim Youngseok.
This article explains recent developments in Korean competition law enforcement from three perspectives. First, the Korea Fair Trade Commission ('KFTC') has recently improved its public enforcement procedures, focusing on preventing the collection of irrelevant materials during its on-site investigations, ensuring confidentiality in the KFTC's investigations against the legal departments of investigated companies, and enabling more active participation from respondents in expressing their opinions. Second, the most significant progress in the enforcement of Korea's Monopoly Regulation and Fair-Trade Act ('MRFTA') is evident in criminal enforcement. The KFTC and various other national institutions are actively employing criminal penalties, compelling companies to consider criminal procedures early in their response to investigations. Third, advancements have also been made in private enforcement, including (1) increased damage suits by parties injured by MRFTA violations, (2) derivative suits initiated by shareholders to recover company losses, and (3) recent legislative efforts to promote private enforcement through injunctions that prevent and prohibit violations and assist the injured parties in proving damage.

Miao Chong v. SAIC-GM: The Dawn of the Private Enforcement of Chinese Anti-Monopoly Law? Forfatter: Chunxu WU.
Global antitrust experiences have demonstrated that plaintiffs are frequently faced with evidentiary difficulties in the private enforcement of competition law, and China is no exception. In Miao Chong v. SAIC-GM, the Supreme People's Court (SPC) of China, for the first time ever, affirmed the presumption of the truthfulness of the facts established in antitrust infringement decisions in the private enforcement of competition law, which is believed to relieve the plaintiff's burden of proof in establishing damages claims. However, the Miao Chong ruling should not be overstated because the application of this presumption must be combined with the judge's investigative power to collect evidence, which is also subject to certain strict conditions. In fact, the plaintiff's weak evidentiary position in the private enforcement of competition law lies in the de facto inequality of power and resources between parties. This is demonstrated by the fact that most plaintiffs are individuals who also lack effective evidentiary systems. To elevate the plaintiff's footing in the private enforcement of Chinese Anti-Monopoly Law (ALM), this article proposes changes to the existing presumptions of harm and substantive legal tests, with the aim of reducing the plaintiffs' evidentiary burden and better assisting them in defending their compensation claims.

Prevention and Detection of Bid Rigging in Public Procurement in India: Role of Artificial Intelligence. Forfatter: Achu Ann Michael.
India's National Crime Record Bureau's report, 'Crime in India', stipulates that the conviction rate of economic crimes is only 29.4% which is way lesser than that of criminal conviction rate of 57%. Punitive measures under the Competition Act, 2002 are relatively less explored in the Indian context. This article is an attempt to examine the punitive measures in the Act, the evidence used for conviction and to see how the same deter the violators. An attempt is made to find out how the apex court in Rajasthan Cylinders case (Rajasthan Cylinders and Containers Ltd v. UOI and Anr., 2018 SCC

Online SC 1718.) might have diluted the already weak conviction rate of India. Artificial intelligence is used in many jurisdictions for cartel identification. The evidentiary standards in Indian jurisdiction in regard to cartel identification are almost equivalent to 'beyond reasonable doubt' instead of 'preponderance of probability'. Need arises that the evidentiary jurisprudence of 'reverse onus or reverse burden', whereby shifting the burden of proof on the accused, should be used liberally in instances of anticompetitive practices. Did the apex court fail? If digital algorithms are there to guide and highlight the red flags in clandestine cartelization, how will the jurisdictions use them to counter the anti-competitive practices?

The New EU Competition Law, Pablo Ibáñez Colomo. 1st Edition. Oxford, U.K.:Bloomsbury Publishing. 2023 Laura Phillips-Sawyer, Jane W. Wilson.
Book review.

Artikler fra Antitrust Law Journal

Intet nyt.

Artikler fra Antitrust Bulletin

Intet nyt.

Artikler fra Competition Law and Policy Debate

Intet nyt.

Artikler fra Competition Law Scholars Forum

Intet nyt.

Artikler fra Journal of Regulatory Economics

Volume 66, issue 1, August 2024:

Rules for the rulemakers: asymmetric information and the political economy of benefit-cost analysis. Forfattere: David Besanko, Avner A. Kreps & Clair Yang.
This paper presents a model of an executive administration that decides whether to mandate benefit-cost analysis (BCA) of newly proposed regulations. A regulator has private information about the social benefit of a new rule but may differ from the executive's preferences for regulation. BCA, which provides a noisy signal of the rule's social benefit, is most valuable when the executive is regulation neutral. Extremely regulation-averse administrations may be harmed by BCA unless they can bias it. Our results are consistent with use of BCA by U.S. presidential administrations since Reagan.

Natural monopoly revisited. Forfatter: Oriol Carbonell-Nicolau.
We study the conditions under which production processes exhibit a decreasing average cost function in the absence of perfectly competitive input markets and discuss some implications for regulatory policy.

Performance based regulation in electricity and cost benchmarking: theoretical underpinnings and application. Forfattere: Agustin J. Ros, Sai Shetty & Timothy Tardiff.
Performance based regulation ("PBR") directly regulates public utilities' prices or revenues with the goal to provide greater incentives for achieving efficiencies and other cost savings than cost-of-service (profit) regulation provides. PBR plans typically include a formula capping the allowed prices or revenues with the cap calculated to reflect what we would expect to observe in competitive markets in the long run: prices are set to equal input prices minus productivity "I–X", where I represents inflation and X represents industry-wide productivity. The PBR formula may also include a consumer stretch factor ("stretch factor")—sometimes referred to as a consumer productivity dividend. Some regulators view the stretch factor as a one-time component meant to share between the company and customers the immediate expected increase in productivity growth as the regulated firm transitions from cost of service to PBR regulation. Other regulators view it more as a permanent component of PBR meant to incentivize the regulated firm beyond the initial switch to PBR by benchmarking its costs to a comparable group of companies and rewarding (penalizing) it for superior (inferior) cost performance. This paper focuses on economic aspects of utilizing the stretch factor as a permanent feature of PBR, and importantly, on the theoretical underpinnings of utilizing cost benchmarking to determine the stretch factor in a PBR plan.

We provide a review of the academic literature on econometric cost benchmarking and assess that literature with respect to the stretch factor. We provide an econometric cost benchmarking analysis, using data on U.S. electricity transmission.

Competitive effects of implicit auction on interconnectors: evidence from Japan. Forfatter: Kota Sugimoto. Interconnectors play a crucial role in electric power systems. They contribute to balancing demand and supply in real-time, guaranteeing efficient dispatch in wide geographic regions, and increasing competition by creating large markets. However, interconnector capacity is a scarce resource because vertically integrated utilities were required to have generating capacity enough to supply most customers within their operating region under a regulated monopoly. Hence, identifying the efficient allocation method is essential, particularly after recent electricity market restructuring. This study evaluates the competitive effect of the implicit auction on the interconnector transmission capacity. The implicit auction allocates all the interconnector capacity simultaneously with electric energy in the day-ahead market. This method prevents market participants from strategically withholding the physical interconnector capacity ex ante to exercise market power, as allowed under the first come, first served rule. This study empirically shows how the capacity was withheld from the day-ahead market under the first come, first served rule using detailed reservation data. Next, I show that the implicit auction increases interconnector capacity available at the day-ahead market and trade volume. I use machine-learning methods, such as random forest and deep neural networks, to predict the counterfactual market outcomes without implicit auction. I find that the gain from trade under the implicit auction is more than US$55 million per year in Japan, which is more than 100 times the implementation cost of the implicit auction.

Artikler fra International Review of Law and Economics

Intet nyt.

Artikler fra Competition Law Journal

Intet nyt.

Artikler fra European Competition and Regulatory Law Review

Intet nyt.

Artikler fra Communications Law

Intet nyt.

Artikler fra Computer and Telecommunications Law Review

Volume 30, issue 6, 2024:

The Digital Markets, Competition and Consumers Act - the competition perspective: Forfatter: Tom McQuail. Discusses the enhanced competition powers of the Competition and Markets Authority under the Digital Markets, Competition and Consumers Act 2024, in relation to extraterritoriality, international collaboration, market inquiries, investigatory and enforcement powers and merger control reforms.

Artikler fra Global Competition Litigation Review

Intet nyt.

Artikler fra Market and Competition Law Review

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Andre udenlandske artikler

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