Konkurrenceretlig Nyhedsoversigt nr. 97 / dækkende 26. oktober 2024 – 20. november 2024

Indhold

1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Godkendelse på baggrund af en forenklet sagsbehandling af Arjun Infrastructure Partners Limited's erhvervelse af enekontrol over Bigadan Holding ApS.
IAE1 LP, som er ultimativt kontrolleret af Arjun, ejer før fusionen 49,9 pct. af anparterne i Bigadan, og Arjun og sælger, B+ Invest ApS, har fælleskontrol over Bigadan. Ved fusionen erhverver IAE3 Davy LP, som er ultimativt kontrolleret af Arjun, de resterende 50,1 pct. af anparterne i Bigadan. Arjun erhverver herved enekontrol over Bigadan.
Læs mere
Dato: 19/11/2024

Godkendelse på baggrund af en forenklet sagsbehandling af NCG Distribution A/S' erhvervelse af enekontrol over Ford Motor Company A/S.
Transaktionen indebærer, at NCG Distribution A/S, der er et helejet datterselskab under Nic. Christiansen Gruppen A/S, erhverver enekontrol over Ford Motor Company A/S.
Læs mere
Dato: 18/11/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Davidsen Koncernen A/S' erhvervelse af enekontrol over Roslev Trælasthandel A/S.
Kesko erhverver gennem sit danske datterselskab, Davidsen Koncernen A/S ("Davidsen"), 100 pct. af aktierne i Roslev Trælasthandel. Dermed erhverver Kesko enekontrol over Roslev Trælasthandel.
Læs mere
Dato: 14/11/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Polaris Private Equity V K/S' erhvervelse af enekontrol med 7N A/S.
Transaktionen indebærer, at Polaris Private Equity V gennem datterselskabet BidCo af 15. marts 2023 A/S erhverver 100 pct. af aktiekapitalen i 7N. Polaris Private Equity V opnår således enekontrol over 7N.
Læs mere
Dato: 11/11/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Addtech Nordic AB's erhvervelse af Unilite A/S.
Ved transaktionen erhverver Addtech Nordic AB 100 pct. af aktierne i Unilite A/S. Addtech Nordic AB erhverver herved enekontrol over Unilite A/S.
Læs mere
Dato: 30/10/2024

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

Tilsynsudtalelse om Aarhus Kommunes opførelse af et nyt stadion og indgåelse af lejeaftale med AGF A/S.
Ankestyrelsen vurderer ud fra de foreliggende oplysninger, at det ikke er muligt at konstatere, om den årlige stadionleje er fastsat svarende til markedslejen, og at lejeaftalen dermed er indgået på markedsvilkår.

Ankestyrelsen har således ikke tilstrækkeligt grundlag til at kunne vurdere, om lejeaftalen er i overensstemmelse med kommunalfuldmagtsreglerne.

Ankestyrelsen har ikke fundet anledning til at tage stilling til de øvrige elementer i lejeaftalen.
Læs mere
Dato: 30/09/2024

Andet

Intet nyt.

2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust & Cartels

Commission carries out unannounced antitrust inspections in the data centre construction sector.
The European Commission is carrying out unannounced inspections at the premises of companies active in the data centre construction sector. In parallel, the Commission has sent out formal requests for information to several companies active in the same sector.

The Commission has concerns that companies in the data centre construction sector may have violated EU antitrust rules that prohibit cartels and restrictive business practices. The Commission is particularly investigating a possible collusion in the form of no-poach agreements.
Læs mere
Dato: 18/11/2024

Commission fines Meta €797.72 million over abusive practices benefitting Facebook Marketplace.
The European Commission has fined Meta €797.72 million for breaching EU antitrust rules by tying its online classified ads service Facebook Marketplace to its personal social network Facebook and by imposing unfair trading conditions on other online classified ads service providers.

The Commission's investigation found that Meta is dominant in the market for personal social networks, which is at least European Economic Area ('EEA') wide, as well as in the national markets for online display advertising on social media. In particular, the Commission found that Meta abused its dominant positions in breach of Article 102 of the Treaty on the Functioning of the European Union ('TFEU') by:

1. Tying its online classified ads service Facebook Marketplace to its personal social network Facebook. This means that all Facebook users automatically have access and get regularly exposed to Facebook Marketplace whether they want it or not. The Commission found that competitors of Facebook Marketplace may be foreclosed as the tie gives Facebook Marketplace a substantial distribution advantage which competitors cannot match.
2. Unilaterally imposing unfair trading conditions on other online classified ads service providers who advertise on Meta's platforms, in particular on its very popular social networks Facebook and Instagram. This allows Meta to use ads-related data generated by other advertisers for the sole benefit of Facebook Marketplace.

Læs mere
Dato: 14/11/2024

Commission opens antitrust investigation into possible anticompetitive practices by Corning over cover glass for electronic devices.
The European Commission has opened a formal investigation to assess whether Corning may have abused its dominant position on the worldwide market for a special type of glass that is mainly used to protect the screens of handheld electronic devices, such as mobile phones.
Læs mere
Dato: 06/11/2024

Commission fines Teva €462.6 million over misuse of the patent system and disparagement to delay rival multiple sclerosis medicine.
The European Commission has fined Teva €462.6 million for abusing its dominant position to delay competition to its blockbuster medicine for the treatment of multiple sclerosis, Copaxone. The Commission found that Teva artificially extended the patent protection of Copaxone and systematically spread misleading information about a competing product to hinder its market entry and uptake.
Læs mere
Dato: 31/10/2024

Mergers

Intet nyt.

State Aid

Commission approves €790 million Romanian State aid measure to support closure of coal mines in Jiu Valley.
The European Commission has approved, under EU State aid rules, a €790 million (approximately RON 3.9 billion) Romanian measure to cover exceptional costs arising from the closure of the four uncompetitive coal mines of Lonea, Lupeni, Livezeni and Vulcan in the Jiu Valley.
Læs mere
Dato: 15/11/2024

Commission clears Polish compensation for Poczta Polska's universal postal service obligation.
The European Commission has approved, under EU State aid rules, Poland's plans to compensate **Poczta Polska** for its universal postal service obligation over the period 2021-2025.

In 2015, Poczta Polska was entrusted with the provision of the universal postal service obligation for the period 2015-2025 but was not compensated for it over the period 2015-2020. In December 2022, Poland informed the Commission of its plans to compensate Poczta Polska approximately €865 million for the period 2021-2025.
Læs mere
Dato: 15/11/2024

Commission finds Française des Jeux ('FDJ')'s exclusive rights contain no state aid after amendments.
The European Commission has concluded that the increased remuneration by Française des Jeux ('FDJ') to France for the modification of exclusive rights to operate offline and online lottery games and offline sports betting through 2019 PACTE law is in line with EU State aid rules. Following an in-depth investigation, limited changes to parameters of the remuneration calculation methodology were made, which resulted in a total remuneration of €477 million, that is, an increase of €97 million from an initial amount of €380 million.
Læs mere

Dato: 31/10/2024

Commission approves €150 million Greek State aid measure funded under Recovery and Resilience Facility to support construction of carbon storage facility in Prinos.
The European Commission has approved, under EU State aid rules, a €150 million Greek measure made available through the Recovery and Resilience Facility ('RRF') to support the construction of a carbon storage facility in Prinos. The measure contributes to achieving Greece's climate targets and the EU's strategic objectives under the European Green Deal.
Læs mere
Dato: 28/10/2024

Commission approves €724 million Danish State aid greenhouse gas tax reduction scheme for companies at risk of carbon leakage.
The European Commission has approved, under EU State aid rules, a €724 million (DKK 5.4 billion) Danish scheme to lower the rate of a new greenhouse gas (GHG) emissions tax for certain companies. The measure aims to prevent the risk of carbon leakage, where companies relocate production outside of the EU to countries with less ambitious climate policies, resulting in increased greenhouse gas emissions globally.
Læs mere
Dato: 25/10/2024

Andet

Booking must comply with all relevant obligations under the Digital Markets Act.
On 13 May 2024, the Commission designated Booking Holdings as a gatekeeper for its online intermediation service, Booking.com. As of 14 November, Booking must ensure its online intermediation service, Booking.com, complies with all relevant obligations under the Digital Markets Act (DMA).

Booking must now allow hotels, car rentals, and other relevant service providers to offer better prices and conditions on other online channels, including their own websites, than those offered on Booking.com. Booking is also prohibited from implementing any measures that would restrict this freedom of relevant service providers. Furthermore, hotels and other travel services will have real-time and continuous access to data provided or generated by the use of Booking.com, offering new insights to these providers. At the same time, users can now choose to transfer the data they provided to and generated on Booking.com to alternative platforms. This will allow travel service providers to develop more innovative deals and tailored offers, to the benefit of European customers and businesses.
Læs mere
Dato: 14/11/2024

Apple's operating system iPadOS must comply with all relevant obligations under the Digital Markets Act.
Apple must ensure its operating system iPadOS complies with all the relevant obligations under the Digital Markets Act (DMA). On 29 April 2024, the Commission added Apple's iPadOS to the list of core platform services for which Apple is designated as gatekeeper.

Apple must, among others, allow users to set the default web browser of their choice on iPadOS, allow alternative app stores on its operating system, and allow accessory devices, like headphones and smart pens, to effectively access iPadOS features.

On 1 November, Apple also published a compliance report detailing the measures it has taken for iPadOS to comply with the DMA. The public version of the report is accessible on the Commission's DMA webpage.

The Commission will now carefully assess whether the measures adopted for iPadOS are effective in complying with the DMA obligations. The Commission's assessment will also be based on the input of interested stakeholders.
If the Commission concludes that Apple's solutions are not compliant with the DMA, the Commission will take formal enforcement action as foreseen in the DMA.
Læs mere
Dato: 04/11/2024

Commission organises a compliance workshop with Booking.
On 25 November, the Commission will hold a technical workshop with interested third parties to receive their views on specific issues and questions that may arise in relation to the measures that Booking has put in place to ensure effective compliance of its online intermediation service - Booking.com - with the DMA.
Læs mere
Dato: 25/10/2024

Nyt fra EU-domstolen

Domme

T-386/21 – Crédit agricole og Crédit agricole Corporate and Investment Bank mod Kommissionen.
Nøgleord:

Konkurrence – konkurrencebegrænsende aftaler – sektoren for obligationer udstedt i amerikanske dollars af overstatslige organer, stater og agenturer – afgørelse, som fastslår en overtrædelse af artikel 101 TEUF og EØS-aftalens artikel 53 – samordning af priser og af handel med obligationer – udveksling af følsomme forretningsoplysninger – samlet og vedvarende overtrædelse – konkurrencebegrænsende formål – bødeberegning – grundbeløb – erstatningsværdi for afsætningens værdi – annullationssøgsmål – fuld prøvelsesret.

Tvist:

Den omhandlede adfærd vedrører obligationer udstedt i amerikanske dollars af overstatslige organer (supra-sovereign bonds), stater (sovereign bonds) og agenturer (agency (sub-sovereign bonds) (herefter »SSA-obligationer«). SSA-obligationer er gældsværdipapirer, som giver udstederen mulighed for at rejse midler til at finansiere visse udgifter eller visse investeringer.

Udstederen af disse gældsværdipapirer kan således udstede en obligation for at låne et beløb (det nominelle beløb) hos en investor (indehaveren) for en begrænset periode, som kan være kort (eksempelvis to år) eller lang (eksempelvis 10 eller 30 år), og til en fast eller variabel rentesats, der er fastsat på forhånd. Indehaveren af obligationen modtager med jævne mellemrum renter (kuponrenter) fra udstederen og får tilbagebetalt det nominelle beløb på den aftalte forfaldsdato.

SSA-obligationer er inddelt i kategorier på grundlag af udstederens identitet. Obligationer udstedt af overstatslige organer udstedes af overnationale institutioner såsom Den Europæiske Investeringsbank (EIB) eller Den Internationale Bank for Genopbygning og Økonomisk Udvikling (IBRD). Statsobligationer udstedes af centralregeringer og kan udstedes i den nationale valuta og undergives national lovgivning eller i en anden valuta end den nationale valuta og undergives en anden lovgivning end national lovgivning. Endelig udstedes obligationer udstedt af agenturer af understatslige enheder eller af institutioner, der implicit eller udtrykkeligt støttes af de offentlige myndigheder, såsom Caisse d'amortissement de la dette sociale (fond til afvikling af gæld på socialområdet, CADES, Frankrig) eller Kreditanstalt für Wiederaufbau (kreditinstituttet for genopbygning, KfW, Tyskland). Disse obligationer kan udstedes i den nationale valuta eller i udenlandsk valuta.

SSA-obligationer udbydes første gang til salg på det primære marked af udstederen heraf eller på dennes vegne. De handles herefter som »OTC-handel« (over-the-counter) mellem investorer på det sekundære marked uden central børs.

Den adfærd, der er påtalt i den anfægtede afgørelse, vedrører ikke det primære marked, men alene senere transaktioner, der gennemføres på det sekundære marked.

Dom:

Sagerne T-386/21 og T-406/21 forenes med henblik på dommen.

I sag T-386/21:

1. Artikel 1, litra c), i Kommissionens afgørelse C(2021) 2871 final af 28. april 2021om en procedure i henhold til artikel 101 [TEUF] og artikel 53 i EØS-aftalen (sag AT.40346 – SSA-obligationer) annulleres, for så vidt som det heri fastslås, at Crédit agricole SA og Crédit agricole Corporate and Investment Bank deltog i overtrædelsen fra den 10. januar 2013 til den 24. marts 2015 og ikke fra den 11. januar 2013 til den 24. marts 2015.

2. Artikel 2, litra c), i afgørelse C(2021) 2871 final annulleres, for så vidt som den bøde, som Crédit agricole Corporate and Investment Bank og Crédit agricole hæfter solidarisk for, blev fastsat til 3 993 000 EUR.
3. Den bøde, som Crédit agricole Corporate and Investment Bank og Crédit agricole pålægges i henhold til artikel 2, litra c), i afgørelse C(2021) 2871 final, fastsættes til 3 993 000 EUR.
4. I øvrigt frifindes Europa-Kommissionen.
5. Crédit agricole og Crédit agricole Corporate and Investment Bank betaler sagsomkostningerne.

I sag T-406/21:

1. Europa-Kommissionen frifindes.
2. UBS Group AG og Credit Suisse Securities (Europe) Ltd betaler sagsomkostningerne.

Læs mere
Dato: 06/11/2024

Forslag til afgørelse

Intet nyt.

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.

Andet internationalt nyt

U.S. DOJ Antitrust Division: Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations.
This guidance focuses on assessing a compliance program's effectiveness in the context of criminal violations of the Sherman Act, 15 U.S.C. § 1 et seq., such as price fixing (including wage fixing and conspiracies to suppress other terms of price competition), bid rigging, market allocation, and monopolization, as well as obstructive acts that imperil the integrity of antitrust investigations.

The guidance aids Antitrust Division prosecutors in evaluating corporate compliance programs at two points in time: 1) making charging decisions; and 2) making sentencing recommendations (including obligations such as reporting or an independent compliance monitor). In making this evaluation, prosecutors assess a compliance program as it existed the time of the offense, as well as the company's subsequent improvements to the program. This assessment requires prosecutors to obtain information necessary to evaluate compliance programs throughout the course of their investigation, including asking relevant compliance-related questions of witnesses. Accordingly, prosecutors should not wait for companies to offer a presentation before beginning their evaluation of a program.
Læs mere
Dato: November 2024

Draft new guidance for road fuel monitoring.
The Competition and Markets Authority (CMA) is consulting on its draft guidance relating to the exercise of our new information gathering powers which are relevant to our road fuel monitoring function.
Læs mere
Dato: 14/11/2024

Draft new guidance for the markets regime in the Enterprise Act 2002.
The Competition and Markets Authority (CMA) is consulting on its draft new guidance for the markets regime in the Enterprise Act 2002, as amended by the Digital Markets, Competition and Consumers Act 2024.
Læs mere
Dato: 05/11/2024

ELI Publishes Principles Governing the Third Party Funding of Litigation (TPFL).
These comprehensive Principles aim at providing essential guidance for litigants, funders, legal advisors, and regulatory bodies involved in TPFL agreements. Developed in response to the rapidly expanding global TPFL market, the Principles

seek to enhance transparency, fairness, and accessibility in litigation funding. The ELI encourages jurisdictions to incorporate these Principles – which provide a flexible framework – into legislation or regulation to ensure effective enforcement.
Læs mere
Dato: 09/10/2024

Autorité de la concurrence: Regulated tariffs for electricity: the Autorité recommends preparing for their abolishment and pursuing their public policy objectives through other measures.
Pursuant to Article L. 337-9 of the French Energy Code (*Code de l'énergie*), the *Autorité* has submitted an assessment report to the Ministers for Energy and the Economy on regulated tariffs for electricity (*tarifs réglementés de vente d'électricité* – TRV). In the report, the *Autorité*notes, as was the case in 2021, that although the retail electricity markets in France have been opened up to competition, 59% of individual consumers and 35% of small non-household consumers still use TRVs. Given the planned end to regulated access to historical nuclear energy on 31 December 2025, the *Autorité* recommends that the French government carry out a comprehensive review of how the electricity markets are organised in France, and prepare for the abolition of regulated tariffs.

TRVs have multiple objectives (e.g. social and regional cohesion, consumer protection) and are managed at two levels, economically by the French energy regulator (*Commission de régulation de l'énergie* – CRE) and politically by the French government, which has deviated on occasion in recent years from the proposals made by the former. Designed to smooth out the prices faced by consumers, TRVs offer reassurance to the latter by protecting them from short-term wholesale price fluctuations, and play, due to their popularity, a key role throughout the market for both individual and small non-household consumers.

However, TRVs constitute neither a low nor a fixed price, and have not prevented *ad hoc*intervention by public authorities in retail prices levels (sometimes even prompting the intervention). Moreover, TRVs blur the price signals that should encourage consumers to reduce their energy consumption, and heavily affect competition, by limiting opportunities for suppliers and the diversity of the offers available to consumers.

For the above reasons, the *Autorité* recommends that practical preparations be made to abolish TRVs, without abandoning the public policy objectives intended to be met by the tariffs, but by introducing more targeted instruments for those objectives, such as designating a supplier of last resort. If TRVs are not abolished, the *Autorité* puts forward proposals to overhaul the tariffs, to foster more competition on the retail markets.
Læs mere
Dato: 19/11/2024

3 | LITTERATUR (DK)

Artikler fra UfR

U 2024B.206/4: Markedsret Del 1 – Konkurrenceret. Af Palle Bo Madsen.
Palle Bo Madsen: Markedsret Del 1 - Konkurrenceret. Djøf Forlag, 9. udg., 2024, 413 sider, hardcover. Pris: 700 kr.
Bogen udgør 9. udgave af *Del 1* af forfatterens trebindsværk om Markedsret.

Som tidligere giver den en generel introduktion til reglerne herom på det danske marked med fokus på den danske konkurrencelov, men med inddragelse af EU-konkurrenceretten. Væsentlige ændringer i regelgrundlaget samt vigtig ny myndigheds- og domstolspraksis fra såvel EU som Danmark har ført til betydelige omskrivninger af flere dele af fremstillingen, der er ført ajour til slutningen af maj 2024. Revisionsarbejdet har forøget bogens omfang med 24 sider.

U 2024B.206/2: Kommunalret for praktikere – I. Af Rikke Søgaard Berth.
Rikke Søgaard Berth: Kommunalret for praktikere – I. Karnov Group, 1. udg., 2024, 275 sider, hæftet. Pris: 615 kr. inkl. moms.

Denne lille håndbog er både skrevet til kommunale jurister og til ikke-jurister i kommunerne, som ønsker viden om en række aktuelle kommunalretlige problemstillinger på tværs af den juridiske logik. Dens første tre kapitler beskriver en række grundlæggende teoretiske emner (kommunalfuldmagten, mellemledsgrundsætningen og reglerne om statsstøtte). Herpå følger et kapitel om regionernes forhold. Bogens sidste 10 kapitler omhandler konkrete «kommunalretlige temaer» fx kommuners muligheder for at varetage sociale hensyn samt miljø- og klimahensyn, mulighederne for at støtte sport og

kultur samt kommunernes involvering i foreninger, fonde og aktieselskaber. Hvert kapital indeholder bokse med korte cases baseret på tilsynspraksis.

U 2024B.203/1: Anmeldelse af European Sports Law, A Comparative Analysis of the European and American Models of Sport. Af Jens Evald.
Lars Halgreen: European Sports Law, A Comparative Analysis of the European and American Models of Sport. Karnov Group, 3. udg., 2024, 457 sider inkl. register. Pris: 1.155 kr. inkl. moms.

Når 3. udgaven undtagelsesvis fortjener denne korte anmeldelse, skyldes det, at der i høj grad er tale om en udgivelse til tiden, ikke mindst på grund af den grundige omtale af de seneste EU-domme om sport og konkurrenceret, nemlig sagerne om den europæiske Super Liga (ISL) (C-333/21), Den Internationale Skøjteunion (IST) (T-93/18) og Det Europæiske Fodboldforbunds (UEFA) regler om »home-grown« spillere (C-680/21), som alle blev offentliggjort den 21. december 2023.

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

Udbud og forordningen om udenlandske subsidier. Forfatter: Michael Steinicke.
Med den nyere forordning 2022/2560 tager EU hånd om udenlandske subsidier der fordrejer det indre marked. Forordningen har et generelt fokus på det indre marked, men indeholder specifikke regler om udenlandske subsidiers betydning i forbindelse med fusionskontrol og indgåelse af offentlige kontrakter. Artiklen beskæftiger sig med forordningens fokus på udbud og undersøger forholdet mellem udbudsreglerne og de procedurer og instrumenter, som forordningen præsenterer. Artiklen behandler således indarbejdelsen af de udbudsretlige begreber og procedurer i forordningens anmeldelsessystem, ligesom der identificeres nogle temaer, som ordregivere og økonomiske aktører bør være opmærksomme på i forbindelse med de udbud der omfattes af forordningens anvendelsesområde. Af praktisk betydning må særligt være muligheden for at anvende udbudsreglernes bestemmelser om unormalt lave tilbud samt principperne om ændringer i afgivne tilbud.

Anden dansk og nordisk litteratur

Intet nyt.

4 | LITTERATUR (UK)

Artikler fra European Competition Law Review

Volume 45, issue 12, 2024:

Managerial liability for fines - company law, competition law and principle of effectiveness. Forfatter: Professor Dr Christian Kersting.
Reviews the debate over the extent to which companies sanctioned for EU competition law breaches can hold their directors and managers liable for fines, highlighting conflicting decisions of the German courts. Suggests, with reference to the principle of effectiveness, why liability is required.

The legal standard for referral to Member States under the EU Merger Regulation. Forfatter: Edward Dean.
Discusses the uncertain legal standard governing when the Commission may cede jurisdiction to Member States on the ground that a merger threatens to "seriously affect" competition under Regulation 4064/89 art.4(4). Reviews the current narrow interpretation, equating to a standard of serious doubts.

Revisiting the aftermarkets doctrine in the context of digital markets. Forfatter: Konstantinos Pantelidis.
Considers how the aftermarkets theory could be applied in the digital markets sector to assess potentially abusive conduct in areas such as cloud services and app stores. Reviews key features of the doctrine, its application in EU and US case law, and how it might be adapted to digital ecosystems.

Exploitative theories of harm and various currencies model in the digital economy: the case of pay-or-okay model. Forfatter: Dr Arletta Gorecka.
Examines, with reference to Facebook's "pay-or-okay" business model, the use of potential exploitative harm theories in the digital market, which may involve payment by user attention, personal data or money. Considers when these may constitute excessive pricing or unfair trading under TFEU art.102.

Canada: anti-competitive practices – infringement. Forfatter: Kaeleigh Kuzma.
Notes the September 2024 announcement by the Canadian Competition Bureau that the former Vice President of Construction DJL was sentenced to 12 months of house arrest for anti-competitive practices including collusive tendering for paving contracts awarded by the provincial government of Quebec.

Czech Republic: anti-competitive practices - investigation (Case Comment). Forfatter: Tomáš Fiala.
Notes a ruling of the Czech Competition Office Chairman in BEKO SPOLKA AKCYJNA, quashing a fine imposed on a consumer electronics wholesaler for obstructing an antitrust investigation, as the inspectors failed to fully explain the scope of the co-operation needed, or the penalty for non-compliance.

Denmark: anti-competitive practices – judgment. Forfatter: Jens Munk Plum.
Notes the decision of Hugo Boss to accept the DKK 12 million fine imposed on it by the Danish Maritime and Commercial High Court, which found the company's dual distribution information exchange with clothing retailer Kaufmann constituted restrictive business practices and an infringement by object.

European Union: anti-competitive practices - judgment (Case Comment). Forfatter: Prof. Bruce Wardhaugh.
Comments on Google LLC v European Commission (C-48/22 P) (ECJ) on the lawfulness of a search engine's self-preferencing strategy, considering the applicability of the refusal of access or discriminatory access principles, approach to leveraging, burden of proof and "as efficient competitor" test.

France: mergers - merger control. Forfatter: Emmanuel Reille.
Notes the September 2024 announcement by the French Competition Authority, following Illumina Inc v European Commission (C-611/22 P) (ECJ), of its continued commitment to ensuring that no merger, even those falling below the notification threshold, will harm competition in its jurisdiction.

France: anti-competitive practices - infringement (Case Comment). Forfatter: Emmanuel Reille.
Notes the French Competition Authority decision in SDU, fining a wine wholesaler and its parent company EUR 500,000, following a settlement procedure, for cartel behaviours encouraging its resellers to adopt minimum resale prices and intervening when they did not.

Hong Kong: anti-competitive practices – investigation. Forfatter: Sandra Marco Colino.
Highlights joint anti-corruption and bid-rigging efforts by the Hong Kong Competition Commission and Independent Commission Against Corruption in the course of an investigation into suspected collusion in the building maintenance market including bribery to influence tendering outcomes.

Hong Kong: anti-competitive practices - investigation (Case Comment). Forfatter: Sandra Marco Colino.
Notes the Hong Kong Competition Tribunal's decision in August 2024 to impose fines of HKD 242,000 and HKD 160,000 respectively and costs on two individuals who failed to respond to proceedings for bid rigging in the IT systems market, following admissions of liability by four other parties.

Malta: mergers - merger control (Case Comment). Forfatter: Adriana Brincat.
Notes the Maltese Office for Competition decision in Lidl Immobiliare Malta Ltd / Said Investments Ltd, blocking a supermarket chain's acquisition of properties operated by another supermarket on the basis that it fell to be assessed as part of the same concentration as an earlier acquisition.

Romania: anti-competitive practices - infringement (Case Comment). Forfatter: Cristina de Jonge.
Notes the Romanian Competition Council decision to fine FCC Environment Romania SRL, a waste storage company, approximately EUR 410,000 for abuse of its dominant position by imposing restrictive access conditions on use of its landfill facility by competitors in the waste management market.

South Africa: anti-competitive practices - investigation (Case Comment). Forfatter: Jocelyn Katz.
Notes the South African Competition Tribunal decision on intervention applications by complainants, Eagle Liner Transport (Pty) Ltd (t/a Eagle Liner & Intercity Xpress) and David Bus Service (Pty) Ltd (t/a Eldo Coaches), in proceedings based on alleged excessive pricing by a bus terminal operator.

Spain: anti-competitive practices - infringement (Case Comment). Forfatter: Pedro Callol.
Notes the Spanish High Court decision ISMA 2000 SL / SRCL CONSENUR SL on the running of the 18-month time limit for antitrust investigations and accordingly, whether a fine imposed in relation to market sharing in the healthcare waste management market was time-barred.

Spain: mergers - merger control (Case Comment). Forfatter: Pedro Callol.
Notes the Spanish National Markets and Competition Commission decision in Smurfit Kappa Bulgaria EOOD / Artemis OOD, approving an acquisition affecting the market for non-aseptic bag-in-box bags for food use, subject to a commitment relating to continued supply of an existing Spanish customer.

Sweden: mergers - merger control. Forfatter: Stefan Perván Lindeborg.
Reports on the opening on 25 July 2024 of a Phase II investigation of a proposed acquisition by Axfood Investering och Utveckling AB, a food retailer and wholesaler, of sole control, already having joint control, of City Gross Sverige AB, a food retailer. Notes the rarity of such investigations.

Turkiye: anti-competitive practices - investigation (Case Comment). Forfatter: Dr. Gönenç Gürkaynak, Esq.
Notes the Turkish Competition Board decision in Petrofis Akaryakit Dagitim Hizmetleri AS / THY Opet Havacilik Yakitlari AS / Triple Star Aviation Ltd, dismissing complaints of discriminatory conduct, refusal to deal and collusion concerning the supply of jet fuel, involving assessment of dominance.

United Kingdom: mergers - merger control (Case Comment). Forfatter: Jordan Bernstein.
Notes the Competition and Markets Authority decision in T&L Sugars Ltd / Tereos United Kingdom and Ireland Ltd, clearing an acquisition involving competing suppliers of packed sugar, highlighting the CMA's acceptance of the exiting firm counterfactual during its Phase II investigation.

Artikler fra European Competition Journal

Intet nyt.

Artikler fra Journal of Competition Law and Economics

Intet nyt.

Artikler fra Journal of Antitrust Enforcement

Volume 12, issue 3, November 2024:

Expanded powers in a market inquiry: is this power consistent with constitutional and natural justice guarantees?—*'The Case of the COMESA Competition Commission'*. Forfatter: Willard Mwemba.
In the past few years, more and more competition authorities have expanded their powers in conducting market inquiries. Some competition laws have given the competition authorities the power to impose remedies after a market inquiry and to impose fines on undertakings that resist providing information during a market inquiry. Some competition authorities are in the process of amending their laws to mirror this development. The COMESA Competition Commission is an exemplary incident of a competition authority that is amending its law to cloth it with expansive powers in the conduct of

market inquiries. This article explores whether or not such expanded powers in a market inquiry are overly intrusive and whether they are consistent with the constitutional and natural justice guarantees. An interrogation on whether there are safeguards to ensure that these powers are not unfettered and do not result in abuse of the rights of those that are subject to this power will also be conducted.

Predictability: a mistreated virtue of competition law. Forfatter: Jan Broulík.
Lacking predictability of enforcement hinders the deterrent function of competition law. This article shows that academic analyses of optimal competition rules do not always treat this factor adequately, paying instead excessive attention to the problem of error. Sometimes, predictability is completely ignored as a relevant factor. At other times, it is taken into account but its effects are framed in a way that undermines their significance. This article further discusses three possible reasons why a part of competition law and economics scholarship engages in such mistreatment of predictability. First, it may be a result of writing convenience. Secondly, the role of predictability in selecting the optimal competition rule may simply be misunderstood. Thirdly, the role of predictability may be belittled intentionally in order to advocate rules benefiting the interests of competition practitioners and/or defendants. This article also briefly explores how problematic each reason is and what solutions might be available.

Innovation against change. Forfatter: Andrew P. McLean.
There is presently an increased enthusiasm for competition law enforcement around the world, driven primarily by concerns about the power of digital platform companies. Against this background, this article identifies the emergence of a 'techno-conservatism' that invokes a 'rhetoric of innovation' to stymy the field's ongoing shift towards a more interventionist paradigm. Drawing parallels between techno-conservatism and twentieth-century Chicago school conservatism, the article holds that appeals to innovation are a means of deterring enforcement against dominant companies in dynamic markets. This article contests the rhetoric of innovation, maintaining that it is possible to reconcile strong enforcement with care for innovation. It does so by raising three points. First, innovation often arises from smaller companies and deconcentrated markets. Secondly, many of the innovations associated with technology companies often have their origins in the public sector. Thirdly, innovation is not innately beneficial. It is not enough to defend dominance simply by pointing to 'more innovation'; thought must also be given to the qualitative nature of that innovation. Taken together, these three ideas represent a useful framework with which to counter the rhetoric of innovation and defend the momentum building in competition law.

The Ecosystem Concept, the DMA, and Section 19a GWB. Forfatter: Philipp Hornung.
The debate about competition concerns in the digital economy cumulated in the adoption of new legislation, Section 19a GWB in Germany and the Digital Markets Act at the EU level. At around the same time, a new term gained prevalence in the competition law discourse—the 'ecosystem'. Often, it is not quite clear, what is meant by it or what the economics behind it are. In this article, I look to the strategic management literature, whose scholars have developed a coherent ecosystem concept. I will explain the economic benefits of the ecosystem structure and the essential role governance plays in it. From the economics of the ecosystem, several insights can be won for competition law. These insights will be applied to the new legislation in the second part. It will be analysed to what extent the DMA and Section 19a GWB are based on the ecosystem concept, whether they identify the problematic actors as addressees, and whether they capture the restrictive conduct. Although both legislative responses do not build on the ecosystem concept, they do not completely fail to address the right issues. Their neglect of the concept, though, could lead to serious enforcement failures.

Why do countries with criminal antitrust sanctions fail to incarcerate price fixers? Forfattere: Terry Calvani & Rory Jones.
A good many jurisdictions have criminalized cartel conduct and authorized custodial sentences for offenders in efforts to enhance antitrust enforcement. The authors explore why so few of those jurisdictions have imposed prison sentences on cartelists. Although data problems lead to understating the number of incarcerations, the record is not robust. The authors find that the reasons are varied. Statutory impediments and poor case selection are important factors. Others include poor case management, separation of investigation and prosecutorial responsibilities and judicial reluctance to impose sentences on 'white collar' criminals. In addition, lack of public support and cultural differences in sentencing in general also probably play roles.

Cartel leniency programme in India—why no race here? Forfattere: Somashekar T.S. & Praveen Tripathi.
This article evaluates the implementation of the cartel leniency programme by the Competition Commission of India (CCI) using comprehensive data covering all related decisions of the CCI from 2009 to 2021. All other things remaining the same *prima facie* discoveries of cartels should have resulted in a 'shock' to *ex ante* expected returns of cartels, thereby encouraging more leniency applications. But, we find no such results or rather no 'race' to the agency. A successful leniency programme requires a transparent and deterrent penalty, plus consistency in applying leniency

provisions. However, inconsistencies in the choice of penalty base and uncertainties in determining final penalties while using mitigating and aggravating factors have led to a poor correlation of penalties with cartel gain or harm. Strategic or otherwise, this has encouraged appeals to the appellate authority, thereby reducing the effective penalty to levels below deterrence. Many acts of bid rigging have been penalized using less stringent criteria and, in a few circumstances, also provided the benefit of leniency. Further, while individuals concerned in leniency cases have always been penalized, the CCI has not been so consistent in non-leniency cartel cases. These asymmetries and 'other' costs create disincentives for exercising the leniency option. We offer suggestions for enhancing the possibility of a race to the agency.

Cultural challenges to competition law enforcement in Latin America. Forfatter: Julián Peña.
The internationalization of competition law in recent decades has been very successful. A very large number of jurisdictions have now adopted competition laws and apply them in marked similarity. And yet, at times, these laws, despite the similarity in wording and theory, lead to substantial differences when enforced. Differences in the meaning attributed to various concepts, to the goals of competition laws and to the methods of implementation, may result in inconsistency in the enforcement. The Latin American experience reveals a certain level of mutation process from the model laws through the flexibilization in their competition law enforcement, influenced by their own social values and beliefs, as well as their economic, political, institutional, and legal cultures. These cultural challenges need to be solved internally in each jurisdiction to allow competition law enforcement to further develop. Those jurisdictions where competition law enforcement has evolved the most are those that have adapted their competition laws to their cultural realities, while at the same time learning from the international experience. An interdisciplinary debate, at the local and regional levels, has showed to be an essential tool to help find possible solutions to the different challenges Latin American enforcers face.

Antitrust under the popular economy: the birth of the antitrust law in Brazil. Forfatter: José Augusto Medeiros.
This article analyses the context of the first Brazilian antitrust law, between 1930 and 1945. Its goal is to clarify how the 'popular economy'—a constitutional and legal concept of the time—functioned as a protective instrument for the internal market. The study explores the hypothesis that the legislation was directed at foreign economic power, already embedded in national economic structures at the time. The research demonstrates that the antitrust legislation arose not only to control prevailing economic power but also to provide meaning to it within the framework of the Estado Novo and its intent to reformulate the internal market. Furthermore, this article highlights the influence of constitutional and administrative doctrines in this movement, indicating how the antitrust system was modulated on liberal bases, assuming the curious figure of a strong State subsidiary to the private sector. The work demonstrates that, aside from the question of supply, a crisis in the insurance policy market throughout 1938 was crucial to drafting the first antitrust law.

The rule of reason and the fundamentals against more presumption-based illegality legal standards: highlights on CADE's decisions on digital economy issues. Forfattere: Dario da Silva Oliveira Neto and others.
This article advocates against more presumption-based illegality legal standards. The focus is on the Rule of Reason analysis, which is in line with CADE's case laws for analysing unilateral conducts, distinguishing between restraints with an anti-competitive effect (or resulting in conduct likely to cause such injury) that are harmful to the consumer, and restraints stimulating competition that are in the consumer's best interest. In this sense, the article recalls some basic concepts, such as market power, dominant position, concentration indexes, and its interactions, since the recent discussions appear to have forgotten its basics. Moreover, a brief analysis of CADE's procedures and the Brazilian Competition system, especially the analyses of unilateral conduct cases, is made in order to present a background for the readers. At the end, we report three digital antitrust cases judged by Cade to demonstrate the steps used by the authority in order to reach a decision on the case. In a nutshell, CADE has not shifted the analysis of unilateral conduct from the use of the rule of reason to a more presumption-based illegality approach.

Artikler fra Journal of European Competition Law and Practice

Volume 15, issue 6, September 2024:

EU merger control: quo vadis? Forfatter: Gianni De Stefano & Pablo Ibáñez Colomo.
As a new European Commission takes office and a new Competition Commissioner is appointed, this JECLAP Special Issue reflects on merger control, its evolution and role in our markets and societies. If we had to choose a word to characterize the common theme underlying the authors' contributions, that would be 'uncertainty'.

Geopolitical risks and prudential merger control. Forfattere: Massimo Motta, Volker Nocke & Martin Peitz.
Key points:

- In the presence of geopolitical risks, competition authorities have to decide how to include those risks in their merger assessments of horizontal and vertical effects.
- Geopolitical risks can lead to the disappearance of competitors or competitive constraints in the relevant market in the foreseeable future.
- The authors explain how pre-merger market shares can be adjusted to account for such risks and also show that prudential merger control finds higher upward pricing pressure than absent such risks.
- Prudential merger control is a coherent extension of current merger control that accounts for failing firms and merger-induced entry, and that increasingly incorporates uncertainty in the assessment of mergers.

Back to the Future? The Examination of Portfolio Effects, Conglomerate Analysis, and Bargaining Leverage in Merger Control. Forfatter: Lucy M. R. Chambers.
Key points:

- Recent European Commission conglomerate merger cases have considered the idea that market and bargaining power derives from a larger platform or selection of products exceeding the sum of its parts.
- This has resulted in the introduction of what is considered a new 'ecosystem' theory of harm, coming from previously existing concepts of foreclosure and portfolio effects, which has arguably caused uncertainty about the application of conglomerate theories in future merger cases.
- This article will examine the appropriateness of this conglomerate effects analysis. With reference to the original cases underpinning a portfolio effects theory of harm and drawing upon economic analysis of increased bargaining leverage, this article will also consider whether there is the potential for a theory of harm involving examination of conglomerate effects through the use of bargaining leverage theory.
- Ultimately, it will be demonstrated that, while there is much of interest in examining the potential applicability of a theory of harm involving bargaining leverage, this cannot be a generalised theory as its application is entirely context-specific and also may already be included in some pre-existing methods of analysis.

Ecosystem theories of harm in EU merger control: analysing competitive constraints and entrenchment. Forfattere: Manu Batra, Paul de Bijl & Timo Klein.
Key points:

- We define ecosystems as (a collection of) platforms with multiple complementary components and then identify two 'ecosystem theories of harm' in merger control.
- First, we adapt the unilateral effects theory from horizontal mergers to ecosystems, where firms exert an actual or potential direct competitive constraint not only at the product layer but also as 'substitute complementarities' at the wider ecosystem layer.
- Second, we adapt the entrenchment theory of harm to ecosystem mergers, distinguishing between procompetitive first-order effects and potentially harmful second-order effects.
- We discuss the relevance of ecosystem theories of harm with reference to the recent EU merger cases, such as *Booking/eTraveli* and *Amazon/iRobot*, and reflect on potential limiting principles such as replicability, openness, and competition on the merits.

Examining data-related theories of harm in EU merger assessments: a systematic review of the decisional practice. Forfattere: Robin Vandendriessche & Caroline Buts.
Key points:

- The rise of data-related mergers, often approved unconditionally, and ensuing abuse of dominance have raised questions about the extent to which all aspects of data-induced market power are sufficiently considered in merger assessments.
- Six aspects, in particular, may affect such an assessment: data availability, data substitutability, the competitive parameter of data protection, data advantages, the data exploitation asymmetry, and interconnected product markets due to data-sharing.
- Through a systematic review of the European Union (EU) decisional practice between 2008 and 2024, we find that although data availability and substitutability assessments have been performed more rigorously in recent merger assessments, the impact of the transaction on data protection as a competitive parameter, the replicability of data advantages and the interconnection of different product markets due to data-sharing, should be more exhaustively considered.

- Ultimately, no radical overhaul of EU merger control is required to address data-related competition concerns, as the main aspects of data-induced market power can and should be examined during the different phases of the traditional merger assessment.

'Balance of harms' after CK Telecoms. Forfatter: Joséphine Thorson.
Key points:

- A 'balance of harms' is not operational in EU merger control law
- Following the ECJ's judgment in *CK Telecoms*, a 'balance of harms' cannot be integrated in the EU merger control law *lex lata*
- Theory on 'balance of harms' demonstrates the necessity of a dynamic approach to EU merger control law

Mass, space, and gravity—merger enforcement in basic industries. Forfattere: Daniele Calisti, Pilar Córdoba Fernández & Amine Mansour.
Key points:

- In basic industries, physical structural metrics and insights are the best tools to predict anticompetitive effects in mergers. In most cases, market power, the gravitational pull that prevents customers from switching to alternatives and enables the merged entity to affect parameters of competition, is often closely linked with mass ie size and space ie distance.
- This article aims to examine how the Commission's appreciation of mass and distance, through the application of the guidelines, has evolved for basic industries and manufacturing, in a way that explains the increasing reliance on capacity, the focus on pivotality, more sophisticated approaches to geographic market definition, and geographic differentiation in the assessment. This shows a deeper understanding of industry dynamics.
- The article delves into important concepts such as industrial integration, market power and pivotality, and geographic differentiation, in order to explain how these impact the assessment of concentrations.

Merger assessment and innovation competition in the pharmaceutical sector. Forfatter: Elisabetta Maria Lanza.
Key points:

- Innovation competition pertains to all research & development activities, such as agrochemical and pharmaceutical processes, targeted at improving current production processes, including the discovery and development of new products.
- *Dow/DuPont* and *Bayer/Monsanto* landmark mergers can be appreciated also for the analysis of pharmaceutical operations, counted that markets similarities between agrochemical and pharmaceutical sectors lead to comparable merger assessments.
- Merger assessment in the pharmaceutical sector should consider innovation competition, having regard to the impact of the operation in terms of potential discontinuation or delay of innovation efforts and possible postmerger price increases of innovative products.
- In the framework of the debate on the effectiveness of turnover-based thresholds, which led to the new EC guidelines on mergers, the *Illumina/Grail* saga as ended with the European Court of Justice annulment, and the introduction of new rules by some National Competition Authorities, the Italian Competition Authority adopted a new merger scrutiny on innovation competition.

Reshaping EU Merger Control: from Harm Detection to Harm Control. Forfattere: Sandra Marco Colino & Ka Lam Macy Chung.
Key points:

- After 20 years of Regulation 139/2004 and the 'more economics' reform, EU merger control is changing once again.
- Instead of reforming the law, the Commission and the Courts have been laying down new paths to galvanize enforcement.
- Thus far, the focus has been on harm detection: focusing on complex transactions, establishing ways of assessing below-the-threshold mergers, and developing new theories of harm.
- The article ponders ways to boost harm prevention and explores three possibilities: using a wider range of remedies, rethinking the burden and standard of proof, and resorting to *ex post* review mechanisms.

Finding the Fix Under Regulation 139/2004 and the Myth of Irremediable Transactions. Forfatter: Basak Arslan.
Key points:

- Regulation 139/2004 and the Remedies Notice provide the Commission with the necessary tools and flexibility to declare almost all transactions compatible with the internal market.
- A review of all Phase II merger cases decided under Regulation 139/2004 between 2004 and 2023 confirms a strong preference for structural remedies over behavioural remedies.
- The four-year period between 2020 and 2023, which coincides with increased intervention based on non-horizontal theories of harm, marks an exception to the general preference for structural remedies in Phase II cases.
- Truly irremediable transactions, *i.e.* those that raise concerns that cannot be remedied through any conceivable means, are rare.

Double-checking mergers: *Ex-ante* and *ex-post* competition law enforcement and its implications for third parties. Forfatter: Eva Fischer
Key points:

- The *Towercast* case establishes a standard for *ex-post* merger control.
- While the European Commission has ex-ante merger control competencies, national competition authorities and national courts are allowed an *ex-post*merger control for below turnover threshold cases.
- The *Towercast* standard mainly relies on third-party enforcement action the underlying reason of which is arguably the aim to increase the effective enforcement of competition law by means of the private initiative.
- In particular, filing a complaint to initiate *public enforcement* procedures of national competition authorities (hereinafter 'NCAs') proves to be most effective for third parties to increase chances of competition law enforcement towards merging parties.

Hot tub time machine? What role for *Towercast* in EU merger control. Forfattere: Margaret Kyle, Omar Shah & Vivek Mani.
Key points:

- The CJEU's judgment in *Towercast* has opened a new pathway for *ex-post*enforcement against acquisitions that did not meet the thresholds for *ex-ante*review.
- Using error-cost framework, we discuss the risk for overenforcement and empirical challenges faced when evaluating mergers using *ex-post* data, including the importance of identifying the correct counterfactual.
- The new regime imposes significant risks including chilling effects on innovation and M&A activity, increase in funding costs for start-ups, and increase in returns on rent seeking behavior from competitors.
- Mitigating risks require careful consideration of the causal relationship between the merger and any *ex-post* market developments as well as greater regulatory clarity on the issue of remedies.

Commissioner Vestager's legacy in merger control. Forfattere: Nicholas Levy, Aleksandra Katolik & Matthew Day.
Key points:

- Over the past decade, Commissioner Vestager has overseen the review of over 3500 mergers, of which nine were prohibited, 52 abandoned, and 162 conditionally approved.
- Generally orthodox in her application of EU merger control rules, Commissioner Vestager's tenure was one of evolution, rather than revolution.
- The principal innovations introduced by Commissioner Vestager concerned the jurisdictional and substantive assessment of digital sector transactions.
- A fierce advocate of rule-based enforcement, Commissioner Vestager strongly defended the Commission's independence from political interference or oversight.

Artikler fra World Competition

Intet nyt.

Artikler fra Antitrust Law Journal

Intet nyt.

Artikler fra Antitrust Bulletin

Volume 69, issue 2-4, December 2024:

The Federal Trade Commission's Antitrust Lawsuit Against the Proposed Microsoft/Activision Merger: Déjà Vu with a Surprise Ending. Forfattere: Glass, Victor & Tardiff, Timothy.
In 2018, the United States Department of Justice filed an antitrust lawsuit against the $80–100 billion merger between AT&T (a major cable provider) and Time Warner (a major content provider). The government predicted that the merged company would foreclose content to competitors, raise content prices, and slow innovation. The government lost the case because the court did not accept its theory that the merged company would enjoy increased bargaining leverage that would disadvantage competitors by offering the merged company's content at increased consumer prices. In 2022, the Federal Trade Commission (FTC) offered a similar rationale in seeking to block the Microsoft/Activision Blizzard's $68.7 billion merger. This paper compares and contrasts the two mergers, as well as three vertical merger cases that occurred around the same time of the closing of Microsoft/Activision, with the intent of highlighting the issues with assessing vertical mergers, with particular focus on online industries.

Deal Value Threshold and M&A: A Competition Law Analysis. Forfattere: Chauhan, Sidharth & Mehta, Dhruv.
In 2023, the Indian Parliament introduced amendments to the Competition Act, 2002. The primary focus of these amendments is to provide regulatory certainty, ensure faster market correction, and provide a trust-based business environment in India. These amendments also aim to give the Competition Commission of India (CCI) adequate power to ensure that no anti-competitive practices are undertaken in India. A plethora of amendments have been enacted, and one of the key amendments impacting M&A is the introduction of the Deal Value Threshold (DVT) while retaining the asset and turnover test. The rationale for this amendment is to ensure digital markets are covered within the ambit of DVT and to ensure that no anti-competitive M&A deals are undertaken in the digital market space. The impact of the new additional threshold in India has been analyzed, and the loopholes in the DVT framework have been highlighted. The impact of DVT on M&A deals undertaken in India has been showcased. In addition, solutions have been provided that can be adopted by the CCI in order to plug the loopholes in this new framework to make it comprehensive.

Implied Market Shares and Antitrust Markets as Fuzzy Sets. Forfattere: Jhun, Jennifer S. & Panhans, Matthew T.
Market definition is an important aspect of antitrust analysis, but the exercise requires designating each potentially relevant good as either completely in or out of the market. In a market with differentiated goods, this often necessitates making unsatisfactory designations. This article introduces the concept of the antitrust market as a fuzzy set, where each relevant good can have a degree of membership in the market, rather than only the traditional binary in or out designation. A product's degree of membership in the market is assigned based on its closeness of substitutability to the focal products. We then show how implied market shares can be calculated from a defined fuzzy antitrust market. We illustrate an implementation of these concepts using data from the grocery retail market and demand estimations from prior literature. We also discuss how this concept serves as a middle way between supporters and detractors of market definition, as implied market shares are objects that not only reflect demand substitutability but also allow for the rhetorical benefits of having delineated a market to focus discussion and analysis of competitive issues.

The Fight for the Right to Repair. Forfattere: Kramer, Jacob A. & Lechner, Matthew.
For more than two decades, a burgeoning "right-to-repair" movement has been underway in the United States, evolving from a nascent effort to democratize automobile repair into a cultural and legal force with ramifications in numerous industries. At the highest level, the right-to-repair movement aims to require manufacturers to provide consumers and independent repair providers with replacement parts, repair manuals, and other such materials used to fix products they own. Although activists have lobbied for the right to repair automobiles since at least 2001, right-to-repair legislation began to gain momentum over the past decade and has expanded from automobiles to other consumer goods, including cell phones, appliances, and other electronic devices, as well as agricultural and medical equipment.

Artikler fra Competition Law and Policy Debate

Intet nyt.

Artikler fra Competition Law Scholars Forum

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Artikler fra Journal of Regulatory Economics

Intet nyt.

Artikler fra International Review of Law and Economics

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Artikler fra Competition Law Journal

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Artikler fra European Competition and Regulatory Law Review

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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

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Artikler fra Market and Competition Law Review

Volume 8, no. 2, 2024:

State aid, sustainable management of natural sites and services of general economic interest. Forfatter: Johan W. Van de Gronden.
Part of the Green Deal policy of the EU is the restoration of nature. This policy is not new as Directive 92/43 on the conservation of natural habitats and of wild flora and fauna has already resulted in the designation of special areas of nature conservation. Recently, the draft regulation on nature restoration was adopted after a heated debate in both the European Parliament and the Council. It is clear from the outset that the need to protect natural sites is high on the agenda of the EU. The Member States are responsible for implementing the EU rules on the management of natural sites. It goes without saying that this implementation will trigger huge investments by these States. This raises issues of EU State aid law: if entities engaged in economic activities receive funding with a view to the management of natural sites, it has to be examined whether this is in line with Articles 107-109 TFEU. In this paper it will be explored whether the concept of Services of General Economic Interest (SGEI) is capable of accommodating nature management concerns in the application of the EU State aid rules. This concept has been used for striking a balance between the necessity to ensure undistorted competition in the EU internal market and various public interest policies. It will be argued that on the basis of arguments derived from ecological solidarity and ecological heritage, the management of natural sites may be designated as a SGEI mission. However, in this regard, it is of great interest to acknowledge that this management consists of three categories of activities: 1) the acquisition of natural sites (in order to make the management of natural sites possible), 2) nature conservation (aimed at the preservation and protection of natural sites), and 3) exploitation of natural sites (such as the selling of wood and touristic activities). The current approach developed in the decisional practice of the Commission and the case law of the Union Courts do not pay due consideration to the special characteristics of these activities and, as a result, it suffers from conceptual problems. This prevents EU Member States from financing projects geared towards the sustainable exploitation of natural sites. In this contribution, an alternative approach will be developed in order to do justice to the wide variety of nature management activities. Such an approach could contribute to the attainment of the Green Deal goals.

Synergies between the CSDDD and EU competition law: a toxic relationship? Forfatter: Marc Veenbrink.
Corporate sustainability due diligence (CSDD) is needed in order to achieve a transition towards a green economy and deliver the UN Sustainable Development Goals. Therefore, the Commission proposed the Corporate Sustainability Due

Diligence Directive (CSDDD) in 2019. In March 2024, the Council and the European Parliament finally reached an agreement on the CSDDD. This Directive obliges companies, if need be, to "collaborate" within the supply chain in order to reach the goals of the act, as long as such collaboration is in compliance with "Union law, including competition law". This begs the question how much room these companies will have under EU competition law to collaborate with other companies in the value chain. In this article, a discussion will take place on the different aspects at stake. Companies should collaborate with subsidiaries and business partners. These companies will, from a competition law perspective, sometimes be seen as part of one undertaking. In instances where we have different undertakings, Article 101 will play a role. This article will then further delve into the question of how much room undertakings will have in light of the cartel prohibition to create agreements with the aim of achieving the CSDDD goals. Therefore, the article will also discuss whether such agreements do infringe the cartel prohibition.

Finding coherence between EU concentrations-related instruments. Forfatter: Catalin Rusu.
Concentrations with EU relevance, depending on their features, may fall under multiple legal regimes. EU/national merger control systems, antitrust rules, the Digital Markets Act, and the Foreign Subsidies Regulation impose (more or less) comprehensive jurisdictional, procedural and substantive requirements on such transactions. The manner in which these legal realms interact is remarkable from several standpoints: concentrations are tested *ex-ante* or *ex-post*, for various sorts of effects, using distinct methodologies and substantive tests. The merging parties may also expect that their transactions switch jurisdictions or are assessed in parallel, or subsequently, by different enforcers. The procedural roadmaps and requirements they are confronted with during the assessment processes cover broad ranges and oftentimes require skilful navigation. This contribution discusses the interplay between the merger control, antitrust, DMA and FSR regimes, attempting to assert whether addressing concentrations with EU relevance is based on coherently interacting frameworks. In doing this, the contribution weighs in on whether the EUMR continues to take centre-stage when it comes to the assessment of such concentrations – a role one could reasonably expect a mature piece of EU secondary law is apt to play.

Standard arbitration agreements and cartel damages under EU law. Forfatter: Antonio Robles Martín-Laborda.
Following the judgment of the Court of Justice and especially the Opinion of the Advocate General in the *CDC Hydrogen Peroxide* case, arbitration agreements on disputes concerning damages for infringements of the competition rules of the TFEU have been interpreted as being contrary to the principle of effectiveness of EU law by making the non-application of the competition rules more likely. Moreover, standard arbitration agreements, which are concluded *ex ante* (before the dispute arises) and delimit their objective scope in generic terms (referring, in one formulation or another, to any dispute arising out of or related to a specific contract), only cover disputes over contractual damages, but not those relating to damages in tort caused by a party's participation in a cartel. Therefore, national judges should not decline jurisdiction over the standard arbitration agreements proposed by the main international arbitral institutions, making it impossible for arbitration to become a viable means of resolving disputes arising from cartel damages. However, although the principle of effectiveness limits the procedural autonomy of the Member States as regards the remedies for exercising the right to claim compensation for such damages, it does not prevent the holder from voluntarily waiving the right to exercise it before a court and submitting the dispute to arbitration. Moreover, in the absence of harmonization by EU law of the rules on commercial arbitration, any question relating to the existence, validity or scope of the arbitration agreement is governed by the law of each Member State. Therefore, a standard arbitration clause may also cover disputes relating to non-contractual liability incurred by a contracting party as a result of its participation in an unlawful cartel if this was the will of the parties when concluding the contract, as interpreted by national courts or arbitrators in accordance with the law applicable to the dispute.

The passing-on problem in damages and restitution under EU law (2nd Edition). Forfatter: Benedita Sequeira.

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