



Konkurrenceretlig Nyhedsoversigt nr. 98 / dækkende 21. november 2024 – 12. januar 2025

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1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Fødevarerhandelsloven: Evaluering.

I 2021 trådte en ny lov i kraft, der regulerer samhandlen mellem fødevarerhandelsvirksomheder. Erhvervsministeren tilkendegav, at loven skulle evalueres i 2024.

Resultaterne fra Konkurrence- og Forbrugerstyrelsens ("styrelsen") årlige monitoreringsrunder i henholdsvis 2022, 2023 og 2024, jf. afsnit 4.2, viser umiddelbart, at der i Danmark er relativt få aftalevilkår, hvor købere og leverandører af landbrugs- og fødevarer oplever problemer med urimelige handelspraksisser. Overordnet og isoleret set viser resultaterne fra monitoreringsrunderne, at der ikke er tegn på urimelige handelspraksisser i større omfang. Også styrelsens håndhævelse af reglerne peger i denne retning. Siden loven trådte i kraft, har styrelsen kun modtaget én klage, som efterfølgende blev trukket tilbage. Styrelsen har således ikke modtaget en eneste reel klage over manglende overholdelse af reglerne.

Enkelte brancheorganisationer har dog fremhævet, at der fortsat er plads til forbedringer på visse områder, når det kommer til den praktiske anvendelse af loven og markedsaktørernes overholdelse af reglerne. Dette gælder særligt i relation til kravet om, at aftalevilkår, der fremgår af fødevarerhandelslovens § 6, skal være aftalt i "klare og utvetydige vendinger", og i relation til købers opkrævning af betaling, som ikke vedrører salg af leverandørens landbrugs- og fødevarer, jf. afsnit 4.3.3. Styrelsen har ikke modtaget eller behandlet klager, der vedrører disse forhold.

Det er styrelsens forståelse, bl.a. på baggrund af dialog med brancheorganisationerne, at virksomhederne i vidt omfang har tilpasset sig reglerne siden lovens implementering. Det er endvidere styrelsens forståelse, at leverandører, købere og brancheorganisationer i vidt omfang løser udfordringer med urimelige handelspraksisser gennem dialog.

Eksempelvis har en brancheorganisation i 2022 oprettet et 'Advisory Board', som rådgiver dets medlemmer om fødevarerhandelsloven og vurderer, om eventuelle klagesager skal indgives til styrelsen. Styrelsen er blevet informeret om, at brancheorganisationen først forsøger at løse sager gennem dialog med den virksomhed, der anklages for at have overtrådt fødevarerhandelsloven, og at boardet kan indbringe sagerne for styrelsen, hvis det findes nødvendigt, jf. afsnit 4.4.1.

Både virksomheder og brancheorganisationer har endvidere udtrykt, at de ikke ønsker ændringer i fødevarerhandelslovens forbudsbestemmelser. Udover at spørge ind til virksomhedernes erfaringer med urimelige handelspraksisser, har styrelsen også undersøgt mulige afledte effekter af loven, herunder bl.a. om reglerne har haft konsekvenser for landdistrikter og lokalområder, og om reglerne har haft betydning for virksomhedernes brug af kreditfacilitering.

Fødevarerhandelsloven implementerer EU-direktivet om urimelige handelspraksisser i dansk lov. Den danske fødevarerhandelslov har ikke de omsætningskategorier, der følger af direktivets artikel 1, og finder derfor anvendelse i flere handler, end hvad der følger af UTP-direktivet. I den forstand går fødevarerhandelsloven videre end direktivets krav.

For de områder, hvor markedsaktørerne oplever udfordringer forbundet med loven, indikerer resultaterne fra styrelsens tre monitoreringsrunder, at dette hovedsageligt skyldes de nye regler om urimelig handelspraksis generelt i UTP-direktivet. I de få tilfælde, hvor respondenter har påpeget negative afledte effekter, synes udfordringerne ikke at relatere sig til den danske implementering.

Endelig viser resultaterne, at den hyppighed hvormed virksomhederne oplever urimelige handelspraksisser, overordnet set ikke har ændret sig væsentligt over de tre år, hvor monitoreringen har været udført. Der er dog i flere tilfælde en tendens til, at den andel af virksomhederne, som ofte oplever en given handelspraksis er faldet.

På baggrund af styrelsens monitorering af fødevarerhandelsloven er det samlet styrelsens vurdering, at loven i dens nuværende form i tilstrækkelig grad imødekommer det bagvedliggende UTP-direktivs formål om at beskytte producenter



og leverandører af landbrugs- og fødevarer mod urimelig handelspraksis fra større købere ved at fjerne eller begrænse visse former for handelspraksis i samhandelen i landbrugs- og fødevarerforsyningskæden.

[Læs mere](#)

Dato: November 2024

Godkendelse på baggrund af en forenklet sagsbehandling af Dansk Ejerkapital VI K/S' erhvervelse af enekontrol over Creativ Company A/S.

Fusionen indebærer, at Dansk Ejerkapital VI K/S erhverver enekontrol over Creativ Company A/S via sit datterselskab DE VI Invest ApS. DE VI Invest ApS vil stifte selskabet DE Dream Holding ApS sammen med Licuno ApS, HEBO Danmark Holding ApS og Palsgaard Gods ApS. DE Dream Holding ApS erhverver 100 pct. af aktierne i Creativ Company A/S.

[Læs mere](#)

Dato: 20/12/2024

Godkendelse på baggrund af en forenklet sagsbehandling af EQT's erhvervelse enekontrol over Crafty Holdco AB, inkl. Ordrestyring ApS.

Før fusionen er Crafty HoldCo ejet af EQT (gennem Crafty TopCo), Adelis Equity Partners samt selskabets ledelse og medarbejdere, men Crafty HoldCo er ifølge parterne ikke underlagt kontrol af nogen af sine ejere. Crafty TopCo vil gennem en aktieemission øge sin aktieandel i Crafty HoldCo og vil som følge af emissionen opnå enekontrol over Crafty HoldCo.

[Læs mere](#)

Dato: 19/12/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Autocentralen.com Holding ApS' og Autocentralen Medarbejderholding ApS' erhvervelse af enekontrol over Carclub A/S.

Fusionen indebærer, at Autocentralen-koncernen erhverver 100% af aktierne i Carclub, og at Autocentralen.com Holding ApS, der er kontrolleret af KJ Holding, Kolding ApS, erhverver enekontrol over Carclub.

[Læs mere](#)

Dato: 18/12/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Saudi Arabian Oil Companys erhvervelse af enekontrol over Rabigh Refining and Petrochemical Company.

Forud for transaktionen er Petro Rabigh underlagt fælleskontrol af Saudi Aramco og Sumitomo Chemical Co. Ltd. Transaktionen indebærer, at Saudi Aramco erhverver ca. 22,5 pct. af aktiekapitalen i Petro Rabigh, hvorefter Saudi Aramco vil eje ca. 60 pct. af aktiekapitalen i Petro Rabigh. Saudi Aramco vil dermed erhverve enekontrol over Petro Rabigh.

[Læs mere](#)

Dato: 17/12/2024

Godkendelse på baggrund af en forenklet sagsbehandling af InstallatørGruppen Danmark ApS' erhvervelse af enekontrol over Kaj Larsen A/S.

Transaktionen indebærer, at InstallatørGruppen erhverver 100 pct. af kapitalandelene i Kaj Larsen og dermed erhverver enekontrol over Kaj Larsen.

[Læs mere](#)

Dato: 11/12/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Dagrofa ApS' erhvervelse af enekontrol over Aarstiderne A/S.

Ved transaktionen erhverver Dagrofa ApS 100 pct. af aktierne i Aarstiderne A/S. Dagrofa ApS erhverver herved enekontrol over Aarstiderne A/S.

[Læs mere](#)

Dato: 10/12/2024

Norlys' køb af GEV Fibernet.

Med købet opnår Norlys Fibernet fuldt ejerskab og enekontrol over GEV Fibernet.

[Læs mere](#)

Dato: 06/12/2024

**Godkendelse på baggrund af en forenklet sagsbehandling af Polaris Private Equity V K/S' erhvervelse af enekontrol med selskabet Salpharm Holding ApS.**

Transaktionen indebærer, at Polaris V erhverver majoriteten af kapitalandelene i Salpharm og dermed erhverver enekontrol over Salpharm.

[Læs mere](#)

Dato: 04/12/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Bio Recycling ApS' erhvervelse af enekontrol over DLG Services A/S' aktiviteter vedrørende handel med biomasseprodukter.

Transaktionen finder sted ved henholdsvis en aktivoverdragelse, hvor leverandør- og kundeaftaler overdrages fra DLGS til Bio Recycling ApS, samt ved indgåelse af en leverings- og outsourcingaftale mellem henholdsvis Bio Recycling ApS og DLG vedrørende disponering over DLG's biomasseprodukter.

[Læs mere](#)

Dato: 02/12/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Uggerhøj Holding ApS' erhvervelse af enekontrol over Brødrene Møll A/S.

Transaktionen indebærer, at Uggerhøj erhverver 100 pct. af kapitalandelene i Brødrene Møll og dermed erhverver enekontrol over Brødrene Møll.

[Læs mere](#)

Dato: 02/12/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Macquarie European Infrastructure Fund 7 SCSp's erhvervelse af enekontrol over ZITON A/S.

Transaktionen indebærer, at Macquarie European Infrastructure Fund 7 SCSp erhverver 100 pct. af kapitalandelene i Ziton og dermed erhverver enekontrol over Ziton.

[Læs mere](#)

Dato: 29/11/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Altor Fund IV Holding's erhvervelse af enekontrol over New Nutrition Holding, inkl. Hamlet Protein.

Ved transaktionen erhverver Altor Fund IV Holding alle aktierne i New Nutrition, og opnår dermed enekontrol over New Nutrition, herunder Hamlet Protein A/S.

[Læs mere](#)

Dato: 28/11/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Bjørn Caning's Eff. Holding ApS' erhvervelse af enekontrol over Bilforum.Tåstrup.ApS.

Transaktionen indebærer, at Bjørn Caning erhverver 100 pct. af kapitalandelene i Bilforum Tåstrup og dermed erhverver enekontrol over Bilforum Tåstrup.

[Læs mere](#)

Dato: 27/11/2024

Nyt fra Konkurrencerådet

Vurdering af Søndersø Brugsforening som egnet køber af tankanlæg fra OK a.m.b.a.

Konkurrencerådet har godkendt, at Søndersø Brugsforening køber et tankanlæg af OK i Otterup, samt at Kalundborg Brugsforening køber to tankanlæg af OK i henholdsvis Høng og Gedser. Køberne skal godkendes af Konkurrencerådet, fordi OK har forpligtet sig til at sælge de tre tankanlæg som led i Konkurrencerådets godkendelse af fusionen mellem OK og Coop Danmark.

Søndersø Brugsforening er andelshaver i både OK og Coop a.m.b.a., der er medejer af Coop Danmark. I OK er der i alt 11.700 andelshavere og i Coop a.m.b.a. er der over 2 millioner andelshavere.

Søndersø brugsforening er bl.a. aktiv på markedet for detailsalg af motorbrændstoffer gennem tre tankanlæg i Bårdesø, Morud og Vissenbjerg, samt tre dagligvarebutikker i Bårdesø, Morud og Søndersø.

[Læs mere](#)

Dato: 18/12/2024



Vurdering af Kalundborg Brugsforening som egnet køber af tankanlæg fra OK a.m.b.a.

Konkurrencerådet har godkendt, at Kalundborg Brugsforening køber to tankanlæg af OK i henholdsvis Høng og Gedser samt at Sønderød Brugsforening køber et tankanlæg af OK i Otterup. Køberne skal godkendes af Konkurrencerådet, fordi OK har forpligtet sig til at sælge de tre tankanlæg som led i Konkurrencerådets godkendelse af fusionen mellem OK og Coop Danmark.

Kalundborg Brugsforening er andelshaver i både OK og Coop a.m.b.a., der er medejer af Coop Danmark. Kalundborg Brugsforening er bl.a. aktiv på markedet for detailsalg af motorbrændstoffer gennem fire tankanlæg (servicestationer) i Kalundborg og Svebølle samt fire dagligvarebutikker i Kalundborg, Jyderup og Svebølle.

[Læs mere](#)

Dato: 18/12/2024

Frederikssund Kommunes afregningspriser.

Konkurrencerådet har truffet en afgørelse af betydning for fremtidens ældrepleje. Afgørelsen kan gøre det mere attraktivt at drive private plejehjem, fordi den skaber mere klarhed om reglerne og dermed kommuners afregningspriser til de private leverandører. Afgørelsen vedrører Frederikssund Kommune, men er principiel og har betydning for hele landet.

Frederikssund Kommune har overtrådt konkurrenceloven ved at fastsætte sine afregningspriser til Attendo A/S i strid med friplejeboligloven. Attendo er en privat leverandør af plejehjemsydelse.

Konkurrencerådet har afgjort sagen og påbyder Frederikssund Kommune at ophøre med at fastsætte afregningspriser i strid med reglerne, at genberegne afregningsprisen for 2021 samt at efterbetale Attendo, hvis genberegningen viser, at afregningsprisen for 2021 har været for lav.

Bestemmelsen, som Frederikssund Kommune har overtrådt gælder, når en kommune har fastsat afregningsprisen ensidigt over for en privat leverandør. Det var tilfældet her.

Sagen handler om Frederikssund Kommunes pligt til at forhøje afregningen til private leverandører af plejehjemsydelse, når omkostningerne for det tilsvarende kommunale tilbud stiger.

Konkurrence- og Forbrugerstyrelsen finder, at Frederikssund Kommunes praksis ikke har fulgt friplejeboliglovgivningen. Samlet set har kommunens praksis ført til, at afregningsprisen for 2021 har været eller skønnes at have været fastsat lavere, end lovgivningen foreskriver.

Dette skyldes tre forhold:

1. Frederikssund Kommune har undladt at medtage samtlige gennemsnitlige omkostninger i afregningsprisen for 2021.
2. Frederikssund Kommune har efterreguleret afregningsprisen for sent til at sikre ligestilling mellem den kommunale leverandør og friplejeboligleverandøren.
3. Frederikssund Kommune tog ikke udgangspunkt i antallet af plejedøgn for 2021, som den burde, da kommunen foretog efterreguleringen i 2023.

[Læs mere](#)

Dato: 18/12/2024

Nyt fra Konkurrenceankenævnet

Intet nyt.

Nyt fra domstolene

Civilretlige afgørelser

Dom fra Højesteret: Konkurrencerådet mod Deutz AG og Aktieselskabet af 04.06.1965 (tidligere Diesel Motor Nordic A/S).

Konkurrencemyndighedernes afgørelse i en sag om to selskabers overtrædelse af konkurrencereglerne led ikke af mangler, der kunne medføre ophævelse og hjemvisning



Ved afgørelse af 12. juni 2013 fandt Konkurrencerådet, at Deutz AG havde overtrådt forbuddet mod misbrug af dominerende stilling, og at Deutz og Diesel Motor Nordic A/S (nu Aktieselskabet af 04.06.1965, i det følgende DMN) havde overtrådt forbuddet mod konkurrencebegrænsende aftaler. Konkurrenceankenævnet stadfæstede den 9. december 2013 Konkurrencerådets afgørelse.

Konkurrencemyndighederne havde lagt følgende hændelsesforløb til grund for deres afgørelser:

DSB skulle have renoveret en række togmotorer, der var produceret hos Deutz. DSB forhandlede i foråret 2010 med Deutz og DMN, der var Deutz' danske forhandler, om levering af reservedele til brug for renoveringen, men parterne indgik ikke nogen aftale. DSB forsøgte i stedet via et EU-udbud at finde en leverandør af reservedele. Deutz anbefalede sine samhandelspartnere ikke at byde på udbuddet, og det lykkedes ikke DSB at indgå en kontrakt på grundlag af udbuddet.

DSB indledte herefter individuelle forhandlinger med flere forskellige markedsaktører med henblik på at skaffe de nødvendige reservedele. DSB indgik aftale med bl.a. Fleco ApS om levering af reservedele. Fleco havde i den anledning forhandlinger med Deutz' hollandske forhandler Equipco, som gav udtryk for, at selskabet ikke kunne levere reservedele til Fleco uden tilladelse fra Deutz. Efter DSB og Fleco havde indgået aftale om levering af reservedele, efter Equipco havde holdt et møde med Deutz, og efter Equipco havde afgivet et tilbud om levering af reservedele uden forbehold til Fleco, holdt Deutz og DMN et møde, hvor det blev aftalt, at Equipco ikke skulle have lov til at levere reservedele til Fleco. Samme dag, som dette møde fandt sted, tilbagekaldte Equipco sit tilbud til Fleco. Deutz iværksatte endvidere en blokering af en række reservedele for at forhindre Deutz' andre forhandlere i at få de reservedele, der var nødvendige for at renovere de pågældende DSB-motorer.

Deutz' leveringsnægtelse og aftalen om hindring af parallelhandel gennem forhandlernetværket virkede. Fleco forsøgte at bestille de nødvendige reservedele hos flere forskellige forhandlere og producenter, men det lykkedes kun i få tilfælde at få leveret reservedele. DSB endte herefter med at bestille reservedele hos DMN.

For Højesteret angik sagen, om der var grundlag for at tilsidesætte Konkurrenceankenævnets afgørelse.

Højesteret udtalte, at det følger af Højesterets praksis, at domstolsprøvelsen af konkurrence-myndighedernes afgørelser fuldt ud omfatter det faktuelle grundlag og retsanvendelsen, mens tilsidesættelse af vurderinger, der i det væsentlige bygger på et konkurrencemæssigt skøn, forudsætter et sikkert grundlag. Højesteret udtalte endvidere, at det følger af Højesteret praksis, at det som udgangspunkt påhviler den, der anfægter myndighedernes skøn, at godtgøre, at der foreligger mangler ved grundlaget for skønsudøvelsen, og at manglerne har haft betydning for afgørelsens indhold.

Ved vurderingen af, om Deutz' havde overtrådt forbuddet mod misbrug af dominerende stilling, skulle konkurrencemyndighederne afgrænse det relevante marked og vurdere Deutz' stilling på markedet, hvilket beror på konkurrencemæssige skøn. Om konkurrencemyndighedernes pligt til at undersøge sagen udtalte Højesteret, at myndighederne skal indhente de oplysninger, der er nødvendige for at kunne foretage disse skønmæssige vurderinger, herunder at sikre sig, at de indhentede oplysninger er tilstrækkelige til at kunne træffe afgørelse, og at der er en sådan sikkerhed om oplysningernes pålidelighed, at det er forsvarligt at træffe afgørelse.

Højesteret bemærkede, at det må afgøres fra sag til sag, hvilke oplysninger der skal indhentes, idet dette afhænger af bl.a. omstændighederne i den enkelte sag, herunder sagens forløb og de involverede parter adfærd.

Højesteret fandt ikke grundlag for at fastslå, at konkurrencemyndighedernes undersøgelser havde været mangelfulde eller utilstrækkelige, ligesom det ikke var godtgjort, at konkurrencemyndighedernes konklusioner var baseret på faktisk forkerte oplysninger. Der var på den baggrund ikke grundlag for at tilsidesætte konkurrencemyndighedernes markedsafgrænsning og vurdering af Deutz' stilling på markedet. Myndighederne havde endvidere med rette lagt til grund, at Deutz havde misbrugt sin stilling, og der var ikke grundlag for at tilsidesætte myndighedernes vurdering af, at dette havde udelukket den effektive konkurrence på markedet for reparation og vedligeholdelse af de omhandlede motorer.

Der var på den baggrund ikke grundlag for at tilsidesætte Konkurrenceankenævnets afgørelse om, at Deutz havde overtrådt forbuddet mod misbrug af dominerende stilling

Højesteret fandt desuden, at konkurrencemyndighederne med rette havde lagt til grund, at Deutz og DMN havde indgået en aftale om, at Deutz skulle hindre parallelimport og passivt salg af reservedele fra Deutz' forhandlernetværk til brug for



renovering og vedligehold af DSB's togmotorer. Det var ikke nødvendigt at påvise faktisk indtrådte skadevirkninger, da aftalen skulle sikre DMN absolut områdebeskyttelse. Højesteret fandt endvidere, at aftalen ikke var omfattet af den såkaldte vertikale gruppefritagelsesforordning, hvorefter visse konkurrencebegrænsende aftaler er lovlige.

Der var på den baggrund heller ikke grundlag for at tilsidesætte Konkurrenceankenævnets afgørelse om, at Deutz og DMN havde overtrådt forbuddet mod konkurrencebegrænsende aftaler.

Landsretten var nået til et andet resultat.

[Læs mere](#)

Dato: 03/12/2024

Straffesager

Autobutler ApS – bøde på 7 mio. kr. – indenretligt forlig ved Sø- og Handelsretten.

Autobutler har accepteret at betale en bøde på 7 millioner kroner. Sagen er afgjort ved et indenretligt forlig.

[Læs mere](#)

Dato: 19/12/2024

Lovforslag i høring

Intet nyt.

Ny lovgivning

Intet nyt.

Nyt fra Ankestyrelsen

Intet nyt.

Andet

Intet nyt.

2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust & Cartels

Commission fines Pierre Cardin and its licensee Ahlers €5.7 million for restricting cross-border sales of clothing.

Pierre Cardin is a French fashion house that licenses its trademark to allow third parties to manufacture and distribute Pierre Cardin branded clothing. Ahlers was the largest licensee of Pierre Cardin clothing in the European Economic Area ('EEA') during the infringement.

The Commission's investigation found that, between 2008 and 2021, Pierre Cardin and Ahlers entered into anticompetitive agreements and engaged in concerted practices to shield Ahlers from competition in those EEA countries where the company held a Pierre Cardin licence, in breach of Article 101 of the Treaty on the Functioning of the European Union ('TFEU') and Article 53 of the EEA Agreement.

In particular, the Commission found that such anticompetitive agreements and concerted practices aimed at preventing other Pierre Cardin licensees and their customers from selling Pierre Cardin-branded clothing, both offline and online: (i) outside their licensed territories; and/or (ii) to low-price retailers (such as discounters) that offered the clothing to consumers at lower prices. The ultimate objective of such coordination between Pierre Cardin and Ahlers was to ensure Ahlers' absolute territorial protection in the countries covered by its licensing agreements with Pierre Cardin in the EEA.



These illegal practices prevent retailers from being able to freely source products in Member States with lower prices and artificially partition the internal market.

[Læs mere](#)

Dato: 28/11/2024

Commission seeks feedback on commitments offered by Corning over possible anticompetitive practices related to cover glass for electronic devices.

Corning, based in the US, is a global producer of glass for many industrial and consumer applications. It produces Alkali-AS Glass, a particularly break-resistant glass mainly used as cover for displays of portable electronic devices such as mobile phones, tablets, or smartwatches. Corning markets Alkali-AS Glass mainly under the 'Gorilla Glass' brand. Alkali-AS Glass has two commercially relevant subtypes, lithium aluminosilicate glass ('LAS Glass') and sodium aluminosilicate glass ('NAS Glass').

[Læs mere](#)

Dato: 25/11/2024

Commission publishes findings of evaluation of the EU competition rules on technology transfer agreements.

The European Commission has today published a Staff Working Document ('SWD') that summarises the findings of its evaluation of the Technology Transfer Block Exemption Regulation ('TTBER') and the accompanying Guidelines on the application of Article 101 of the Treaty to technology transfer agreements ('Guidelines').

The aim of the evaluation was to gather evidence on the functioning of the TTBER and of the accompanying Guidelines, for the Commission to determine whether it should let the rules expire, prolong their duration or revise them. In view of the findings of the evaluation, the Commission will now launch an impact assessment to examine policy options for a revision of the rules.

[Læs mere](#)

Dato: 22/11/2024

Mergers

Commission approves acquisition of Run:ai by NVIDIA.

The European Commission has approved unconditionally, under the EU Merger Regulation ('EUMR'), the proposed acquisition of Run:ai Labs Ltd ('Run:ai') by NVIDIA Corporation ('NVIDIA'). The Commission concluded that the transaction would raise no competition concerns in the European Economic Area ('EEA').

The transaction does not reach the notification thresholds set out in the EUMR as Run:ai's current revenues are negligible. It was notified in Italy, as required by the Italian Competition Act, upon request by the national competition authority, which used its "call-in" powers. Such powers enable the Italian authority to review transactions not meeting the relevant national turnover thresholds where it finds that a transaction may pose concrete risks for competition and the other conditions laid down in the Italian Competition Act are met. Italy submitted a referral request to the Commission pursuant to Article 22(1) of the EUMR. This provision allows Member States to request the Commission to examine a merger that does not have an EU dimension but affects trade within the Single Market and threatens to significantly affect competition within the territory of the Member State(s) making the request. On 31 October 2024, the Commission's accepted Italy's request and the transaction was notified to the Commission on 15 November 2024.

[Læs mere](#)

Dato: 20/12/2024

Commission opens in-depth investigation into the proposed acquisition of Dorna Sports by Liberty Media.

The European Commission has opened an in-depth investigation to assess, under the EU Merger Regulation, the proposed acquisition of Dorna Sports by Liberty Media. The Commission has preliminary concerns that the transaction could lead to higher prices for the licensing of broadcasting rights for motorsports events hosted by both parties.

Liberty Media and Dorna Sports are both international media companies. Liberty owns the Formula One Group and holds the exclusive commercial rights for the FIA Formula One World Championship. Dorna Sports holds exclusive commercial rights for the FIM World Championship Grand Prix ('MotoGP') as well as other motorcycle racing championships.

[Læs mere](#)

Dato: 19/12/2024

**Commission approves Novo Holdings' acquisition of Catalent.**

The European Commission has approved unconditionally, under the EU Merger Regulation, the proposed acquisition of Catalent by Novo Holdings. The Commission concluded that the transaction would not raise competition concerns in the European Economic Area ('EEA').

Novo Holdings is the ultimate owner of Novo Nordisk, a pharmaceutical company focused on the treatment of chronic diseases including obesity and diabetes. Catalent is a contract development and manufacture organisation ('CDMO') that develops and manufactures medicines on behalf of pharmaceutical companies.

[Læs mere](#)

Dato: 06/12/2024

Commission approves EasyJet, IAG and AFKLM as remedy takers in the context of ITA Airways merger control investigation.

The European Commission has approved, under the EU Merger Regulation, EasyJet Airline Company PLC ('EasyJet'), International Airlines Group ('IAG') and Air France-KLM S.A., Société Air France and Koninklijke Luchtvaart Maatschappij N.V. (together 'AFKLM') as suitable remedy takers under the commitments made by Lufthansa AG ('Lufthansa') and the Italian Ministry of Economy and Finance ('MEF') in order to acquire joint control over ITA Airways ('ITA'). The approval of suitable remedy takers is a condition for Lufthansa and the MEF to implement the transaction.

[Læs mere](#)

Dato: 29/11/2024

State Aid**Commission approves €4.06 billion German State aid measure to support the operation of four Floating LNG Terminals.**

The European Commission has approved, under EU State aid rules, an estimated €4.06 billion German measure to support the operation of four storage and regassification units ('FSRUs') for the import of Liquefied Natural Gas ('LNG') by Deutsche Energy Terminal ('DET'). The measure contributes to the achievement of the objectives of the REPowerEU Plan, by enabling the diversification of energy supplies and ensuring security of gas supply.

[Læs mere](#)

Dato: 20/12/2024

Commission approves €1.3 billion Italian State aid measure to support Silicon Box in setting up a new semiconductor advanced packaging facility.

The European Commission has approved, under EU State aid rules, a €1.3 billion Italian measure to support Silicon Box in the construction of a semiconductor advanced packaging and testing facility in Novara. The measure will strengthen Europe's security of supply, resilience and technological autonomy in semiconductor technologies, in line with the objectives set out in the European Chips Act Communication and the Political Guidelines for the European Commission 2024-2029.

[Læs mere](#)

Dato: 18/12/2024

Commission opens in-depth State aid investigation into Polish support for nuclear power plant.

The European Commission has opened an in-depth investigation to assess whether public support that Poland plans to grant for a nuclear power plant in Lubiatowo-Kopalino is in line with EU State aid rules.

[Læs mere](#)

Dato: 18/12/2024

Commission approves French State aid scheme to support decarbonisation of industrial sector.

The European Commission has approved, under EU State aid rules, a French scheme of a maximum amount of €3 billion to support for a period of 15 years companies subject to the EU Emission Trading Scheme ('ETS') in decarbonising their production processes. The measure will contribute to the implementation of France's National Energy and Climate Plan and to the achievement of the European Green Deal targets.

[Læs mere](#)

Dato: 18/12/2024

**Commission approves €3 billion German-Dutch State aid scheme to support the production of renewable fuels of non-biological origin.**

The European Commission has approved, under EU State aid rules, a €3 billion German-Dutch scheme to support the production of renewable fuels of non-biological origin (RFNBOs), including renewable hydrogen, throughout the world. These RFNBOs will be imported and sold in the EU, contributing to the objectives of the EU Hydrogen Strategy, the European Green Deal, as well as of the REPowerEU Plan to reduce dependence on Russian fossil fuels and accelerate the green transition.

[Læs mere](#)

Dato: 18/12/2024

Commission approves €350 million German State aid to support Concrete Chemicals in production of synthetic aviation fuels.

The European Commission has approved, under EU State aid rules, a €350 million German measure to support Concrete Chemicals GmbH in the production of synthetic aviation fuels. The measure will contribute to the achievement of the European Green Deal and the ReFuelEU Aviation targets.

[Læs mere](#)

Dato: 18/12/2024

Commission approves an Italian State aid scheme to support renewable electricity production to foster the transition to a net-zero economy.

The European Commission has approved an estimated €9.7 billion Italian scheme to support electricity production from renewable energy sources 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: 17/12/2024

Commission approves €1.7 billion Danish State aid scheme to support the production of renewable gas.

The European Commission has approved, under EU State aid rules, an estimated €1.7 billion (DKK 13 billion) Danish scheme to support the production of renewable gas to be injected into the grid. The scheme will contribute to the EU's climate targets in line with the European Green Deal, as well as the objectives of the REPowerEU Plan to reduce dependence on Russian fossil fuels and accelerate the green transition.

[Læs mere](#)

Dato: 17/12/2024

Commission approves €81 million Spanish State aid measure to support Diamond Foundry Europe's production of semiconductor-grade synthetic diamonds.

The Commission has approved, under EU State aid rules, a €81 million Spanish measure to support Diamond Foundry Europe in setting-up a new factory for the production of semiconductor-grade rough synthetic diamonds in Trujillo. 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: 16/12/2024

Commission approves €52 million Slovenian State aid measure to support Lek Pharmaceuticals' production of biological drug substances.

The Commission has approved, under EU State aid rules, a Slovenian measure of around €52 million to support Lek Pharmaceuticals ('Lek') in the construction of a new high-tech plant to produce biological drug substances in Lendava. The measure will contribute to the EU's strategic objectives relating to job creation and regional development, as well as to ensuring affordable medicines in line with the Pharmaceutical Strategy for Europe.

[Læs mere](#)

Dato: 13/12/2024

Commission amends rules on small amounts of State aid to the agricultural sector.

The European Commission has adopted an amendment of the 'de minimis' Regulation for the agricultural sector ('Agricultural de minimis Regulation'). The Regulation exempts small amounts of support in the agricultural sector from State aid control since they are deemed to have no impact on competition and trade in the Single Market. The revised Regulation will enter into force three days after its publication in the Official Journal and will apply until 31 December 2032.

[Læs mere](#)

Dato: 10/12/2024

Commission approves €2.6 billion Estonian State aid scheme to support renewable offshore wind energy to foster the transition to a net-zero economy.

The European Commission has approved a €2.6 billion Estonian scheme to support renewable offshore wind energy 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: 09/12/2024

Commission approves €1.9 billion German State aid in favour of DB Cargo conditional on implementation of restructuring plan.

The European Commission has concluded that a German State aid measure of €1.9 billion to support DB Cargo, one of Europe's leading rail freight operators, is in line with EU State aid rules. DB Cargo is a 100% subsidiary of the State-owned, vertically-integrated German rail operator Deutsche Bahn AG ('DB AG').

[Læs mere](#)

Dato: 29/11/2024

Commission closes State aid investigations into Fiat, Amazon and Starbucks tax rulings.

The European Commission has closed three in-depth State aid investigations into transfer pricing tax rulings granted by Luxembourg to Fiat and Amazon, and by the Netherlands to Starbucks. Following judgments by the EU Courts, the Commission found that the tax rulings did not grant the companies selective advantages.

In 2015 and 2017, the Commission found that Luxembourg granted selective tax advantages to Fiat and Amazon, and the Netherlands to Starbucks, in breach of EU State aid rules. In each case, the Commission found that a tax ruling issued by the respective national tax authority artificially lowered the tax paid by each company and therefore granted them a selective advantage over other companies. The Commission's original decisions in all three cases were ultimately annulled by the EU Courts and therefore the respective in-depth investigations remained open.

Taking into account the guidance of the EU Courts, the Commission has adopted three final decisions closing its in-depth investigations and confirming that, when granting their respective tax rulings, Luxembourg and the Netherlands did not give these Fiat, Amazon and Starbucks selective tax advantages contrary to EU State aid rules.

[Læs mere](#)

Dato: 28/11/2024

Commission approves French State aid to Corsica Linea and La Mériidionale for maritime transport services.

The European Commission has found a €853.6 million public service compensation in favour of Corsica Linea and La Mériidionale to be in line with EU State aid rules. The French measures will compensate both companies for the provision of passenger and freight maritime transport services between Marseille and Corsica (Ajaccio, Bastia, Propriano, Porto-Vecchio and L'île Rousse) in 2023-2030.

[Læs mere](#)

Dato: 26/11/2024

Commission welcomes Greece's commitment to bring its tonnage tax scheme in compliance with State aid rules.

The European Commission has recorded the acceptance by Greece of the appropriate measures proposed by the Commission to bring the existing Greek tonnage tax scheme and related measures in line with State aid rules. The measures had been introduced by Greece to support the shipping sector.

[Læs mere](#)

Dato: 25/11/2024

Commission finds Estonian State aid to agricultural company Tartu Agro AS to be incompatible State aid.

The European Commission has concluded that by renting agricultural land at a rate below market price to Tartu Agro AS, an Estonian private company producing among other things milk, meat and cereals, Estonia granted support not in line with EU State aid rules.

Estonia must now recover the incompatible State aid, including interest, from the beneficiary.



[Læs mere](#)

Dato: 25/11/2024

Commission finds German public capital injection in favour of WestSpiel to be incompatible State aid.

The European Commission has concluded that a German public capital injection in favour of the casino operator Westdeutsche Spielbanken GmbH & Co. KG (WestSpiel) is not in line with EU State aid rules. Germany must now recover the incompatible aid, including interest.

[Læs mere](#)

Dato: 22/11/2024

Commission approves €578 million Romanian State aid scheme to support energy-intensive companies.

The European Commission has approved, under EU State aid rules, a €578 million (RON 2.9 billion) Romanian scheme to lower an electricity levy rate for energy-intensive companies. The levy is intended to promote electricity from renewable energy sources. The scheme aims at mitigating the risk that, due to this levy, energy-intensive companies may relocate their activities to locations outside the EU with less ambitious climate policies.

[Læs mere](#)

Dato: 21/11/2024

State aid in the aviation sector – Commission guidelines on airports and airlines (revision).

This initiative aims to revise the guidelines on state aid in the aviation sector and align them with the objectives of the Green Deal, while preserving connectivity and supporting competition in the aviation sector.

Consultation period: 11 December 2024 - 05 March 2025 (midnight Brussels time).

[Læs mere](#)

Dato: 11/12/2024

Andet

Commission seeks feedback on the measures Apple should take to ensure interoperability under the Digital Markets Act.

The Commission has sent preliminary findings to Apple in the context of the two specification proceedings it started on 19 September 2024. These findings indicate the proposed measures for Apple to ensure interoperability of connected devices with iPhones and to make interoperability by third parties more predictable and transparent, as required by the Digital Markets Act (DMA).

Under the DMA, Apple must provide developers and businesses with free and effective interoperability with hardware and software features controlled by its operating systems iOS and iPadOS, which are core platform services for which Apple was designated as gatekeeper.

[Læs mere](#)

Dato: 19/12/2024

ECN+ Directive.

Council Regulation 1/2003 replaced the centralised notification and authorisation system with a decentralised system that is based on the parallel competence of the Commission and the national competition authorities and national courts of the Member States to enforce EU antitrust rules. It has created the European Competition Network (ECN), a forum for cooperation and coordination between the EU competition authorities (i.e. the Commission and the national competition authorities) on enforcement work and the basis for the creation and maintenance of a common competition enforcement culture in the EU.

Since 2004, the Commission and national competition authorities have adopted approximately 1500 decisions, investigating a broad range of cases in all sectors of the economy. From 2004 till 2021, more than 90% of the decisions that applied EU antitrust rules were taken by national competition authorities. Thus, it's essential that national competition authorities operate independently and have the powers to apply the EU antitrust rules effectively.

On 29 November 2024, the Commission adopted a report to the Council and the European parliament on the transposition of the ECN+ Directive (all EU languages). The report focuses on how the main provisions of the ECN+ Directive have been transposed in the Member States that by then had completed the transposition process.

[Læs mere](#)

Dato: 29/11/2024



Sag BS-53152/2023-HJR: Konkurrencerådet mod Deutz AG. Skriftligt indlæg indgivet i henhold til artikel 15, stk. 3, i Rådets forordning nr. 1/2003 af 16. december 2002 om gennemførelse af konkurrencereglerne i traktatens artikel 81 og 82, af Europa-Kommissionen.

Gruppefritagelsesforordningens artikel 4, litra b), bør fortolkes i lyset af den konsistente lovgivningsmæssige baggrund, den langvarige og faste retspraksis om forbud mod opdeling af det indre marked, og det grundlæggende formål med Gruppefritagelsesforordningen, som skitseret blandt andet i præambelens betragtning 10.

Hvis aftalen mellem Deutz og DMN var gruppefritaget som følge af, at den ikke begrænser det område eller den kundegruppe, hvortil DMN måtte sælge de relevante varer, ville det indebære, at parterne i henhold til Gruppefritagelsesforordningen lovligt kunne aftale, at Deutz skulle indgå aftaler, der (i) havde til formål at begrænse konkurrencen i strid med artikel 101, stk. 1, TEUF og (ii) som ikke kunne fritages i henhold til artikel 101, stk. 3, TEUF, da de indeholder hardcore restriktioner.

Konklusion:

Det er på denne baggrund Kommissionens opfattelse, at en aftale, der reelt forpligter en virksomhed til at indgå aftaler, der har til formål at begrænse konkurrencen i strid med artikel 101, stk. 1, TEUF og som ikke kan fritages i henhold til artikel 101, stk. 3, TEUF, ikke kan være gruppefritaget.

Gruppefritagelsesforordningens artikel 4, litra b), skal derfor fortolkes således, at aftaler mellem en leverandør og en kunde, der indeholder en bestemmelse om, at leverandøren skal forpligte sine øvrige kunder til ikke at sælge varer, leveret af leverandøren, ind i et bestemt område eller til en bestemt kundegruppe, ikke er gruppefritaget i henhold til Gruppefritagelsesforordningen.

[Læs mere](#)

Dato: 29/11/2024

Nyt fra EU-domstolen

Domme

[C-606/23](#) - Tallinna Kaubamaja Grupp og KIA Auto.

Nøgleord:

Præjudiciel forelæggelse – konkurrence – aftale med konkurrencebegrænsende virkning – artikel 101, stk. 1, TEUF – vertikale aftaler – konkurrencebegrænsende »virkning« – aftale, der fastsætter begrænsninger med hensyn til bilgarantien – konkurrencemyndighedens pligt til at påvise de konkurrencebegrænsende virkninger – reelle virkninger og potentielle virkninger.

Tvist:

Anmodningen om præjudiciel afgørelse vedrører fortolkningen af artikel 101, stk. 1, TEUF. Denne anmodning er blevet indgivet i forbindelse med en tvist mellem »Tallinna Kaubamaja Grupp« AS og »KIA Auto« AS på den ene side og Konkurrencespadome (konkurrencerådet, Letland) på den anden side vedrørende en bøde pålagt som følge af indgåelsen af en vertikal aftale, der fastsætter begrænsninger med hensyn til bilgarantien.

Dom:

Artikel 101, stk. 1, TEUF skal fortolkes således, at denne bestemmelse ikke pålægger en konkurrencemyndighed i en medlemsstat, der undersøger, om en aftale, som fastsætter begrænsninger med hensyn til bilgarantien, og som forpligter eller tilskynder ejerne af en bil til kun at lade reparation og vedligeholdelse af denne bil gennemføre hos de autoriserede repræsentanter for fabrikanten af bilen og bruge denne fabrikants originale reservedele ved den periodiske vedligeholdelse, for at bilens garanti forbliver gyldig, kan kvalificeres som en konkurrencebegrænsende virkning som omhandlet i denne bestemmelse, at bevise, at der foreligger konkrete og reelle konkurrencebegrænsende virkninger. Det er tilstrækkeligt, at denne myndighed i overensstemmelse med den nævnte bestemmelse godtgør, at der foreligger potentielle konkurrencebegrænsende virkninger, forudsat at de er tilstrækkeligt mærkbare.

[Læs mere](#)

Dato: 05/12/2024



Forslag til afgørelse

Intet nyt.

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.

Andet internationalt nyt

Japan Fair Trade Commission: Market Study on Transactions Between Performers and Entertainment Agencies in the Music and Broadcasting Industry (Market Study on Ensuring Fair Transactions to Support Creators).

Content such as animation, music, broadcasting programs, films, games, and manga are proud assets of Japan. With advancements in technology, the source of competitiveness in content creation is increasingly shifting to individual creators. On the other hand, there is a growing demand to address transactional practices that hinder appropriate return of earnings to creators, in order to establish an environment where individual creators can fully realize their creative potential.

The Japan Fair Trade Commission (JFTC) has undertaken various initiatives to promote fair and free competition in the human resource and entertainment fields. These efforts include the publication of the "Report of Study Group on Human Resource and Competition Policy" by the Competition Policy Research Center in February 2018 and the release of "Examples of Practices in the Entertainment Sector That May Violate the Antimonopoly Act" in September 2019.

Subsequently, the Content Industry Revitalization Strategy (formulated and specified in the "Grand Design and Action Plan for a New Form of Capitalism 2024 Revised Version," approved by the Cabinet on June 21, 2024) stated "It is essential to correct trade practices in order to create a comfortable working environment for performers and others. In light of the current technological innovation, the content industry is shifting its emphasis to individual creativity. With the cooperation of the Japan Fair Trade Commission, we will conduct a fact-finding survey on trade practices in the music and broadcast program fields with an emphasis on preventing abuse of a superior bargaining position and protecting individuals,"

In light of these circumstances, the JFTC conducted a market study on contracts and other arrangements between performers in fields such as music and broadcasting (including artists, actors, and talents) and the entertainment agencies or production companies they are affiliated with (hereinafter referred to simply as "entertainment agencies"). This initiative aims to establish a transactional environment where individual creators can fully realize their creative potential.

[Læs mere](#)

Dato: 26/12/2024

Bipartisan House Task Force Report on Artificial Intelligence.

Although artificial intelligence (AI) is not a new concept, breathtaking technological advancements in the last few years have made AI the focus of numerous policy discussions. AI has tremendous potential to transform society and our economy for the better and address complex national challenges. From optimizing manufacturing to developing cures for grave illnesses, AI can greatly boost productivity, enabling us to achieve our objectives more quickly and cost-effectively. Nevertheless, we also recognize that AI can be misused and lead to various types of harm.

This report highlights America's leadership in its approach to responsible AI innovation while considering guardrails that may be appropriate to safeguard the nation against current and emerging threats. You charged twenty-four members, twelve Republicans and twelve Democrats, with developing a U.S. vision for AI adoption, innovation, and governance. The AI Task Force gathered information on salient AI issues from domain experts in industry, government, civil society, and academia to provide 66 key findings 85 recommendations. In summary, this report encapsulates a targeted approach that balances the need to promote vibrant AI innovation while safeguarding Americans from potential harms as we enter an era of widespread adoption of AI.

[Læs mere](#)

Dato: December 2024

**CMA: Digital markets competition regime guidance.**

This guidance sets out how the CMA will approach its functions under the digital markets competition regime established by Part 1 of the Digital Markets, Competition and Consumers Act 2024.

[Læs mere](#)

Dato: 19/12/2024

Groceries: Loyalty prices offer genuine savings, says CMA.

The CMA looked at thousands of products to see if loyalty prices offered genuine savings – the evidence says yes.

The Competition and Markets Authority (CMA) has found that people who are members of a loyalty scheme can almost always make a genuine saving on the usual price by buying loyalty priced products.

Having analysed around 50,000 grocery products on a loyalty price promotion, the CMA found very little evidence of supermarkets inflating their 'usual' prices to make loyalty promotions seem like a better deal.

[Læs mere](#)

Dato: 27/11/2024

Modernising EU competition law: German proposals for the 2024-2029 term of the European Commission.

Improving the competitiveness of the European economy is the key task for the coming years. Effective competition is a necessary pre-requisite for competitiveness. This requires a stringent competition framework that effectively protects competition in the internal market, while at the same time enabling European firms to scale up and be successful on global markets. We welcome the important reflections and recommendations on competition policy outlined in the recent Draghi report as well as in the mission letter for Executive Vice-President Ribera Rodríguez. However, from our perspective, additional measures are required to fully realize a competition framework that fosters competitiveness, innovation and resilience in order to meet Europe's economic, strategic, and climate ambitions.

[Læs mere](#)

Dato: 17/12/2024

Konkurrensverket: Att mäta konkurrensen i Sverige.

På uppdrag av Konkurrensverket har professor Mats Bergman, professor Sten Nyberg, docent Pehr-Johan Norbäck och ekon. dr. Melinda Suveg utvecklat en tillämpbar mätmetod som kan användas för att mäta konkurrenssituationen på olika marknader i Sverige.

[Læs mere](#)

Dato: 25/11/2024

3 | LITTERATUR (DK)

Artikler fra UfR

U.2024B.230/2: Dansk Fusionskontrol. Jens Munk Plum, Erik Bertelsen, Morten Kofmann, Bart A. Creve & Sonny Gaarslev Dansk Fusionskontrol. Karnov Group, 4. udg., 2024, 679 sider, inkl. 197 siders bilag bestående af lovgrundlag og meddelelser. Pris: 1.200 kr. ekskl. moms.

Siden 3. udgaven er der sket en række nye og væsentlige udviklinger i praksis og i omfanget af mulige "theories of harm" og myndighedernes vurdering heraf, ligesom der er sket væsentlige ændringer i de danske fusionskontrolregler, herunder eksempelvis indførelse af den såkaldte "call-in regel", der medfører, at fusioner under tærskelværdierne kan kræves anmeldt.

4. udgaven af Dansk Fusionskontrol behandler alle disse ændringer. Derudover indeholder bogen blandt andet nye afsnit om udviklingen af andre regelsæt end de traditionelle fusionskontrolregler, som har betydning for danske fusioner, herunder investeringscreeningsregler, Digital Market Act, Foreign Subsidies Regulation samt anvendelse af reglerne om misbrug af dominerende stilling på fusioner under tærskelværdierne.

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

Årgang/nummer: Årgang 31: Nummer 4:

EU-konkurrenceret fra november 2023 til oktober 2024 – praksis, domme og lovgivning. Forfattere: Kristian Helge Straton-Andersen og Martin André Dittmer.

Artiklen gennemgår de mest centrale udviklingstræk i EU-konkurrenceretten fra 1. november 2023 til 31. oktober 2024, herunder Kommissionens praksis, de mest centrale domme og lovgivning inden for forbuddet mod konkurrencebegrænsende aftaler i artikel 101, forbuddet mod misbrug af dominerende stilling i artikel 102, fusionskontrolområdet samt de nye regler om udenlandske subsidier. Derudover behandles Kommissionens nye meddelelse om markedsafgrænsning.

Anden dansk og nordisk litteratur

Intet nyt.

4 | LITTERATUR (UK)

Artikler fra European Competition Law Review

Volume 46, issue 1, 2025:

BKartA and the ALNG: undermining patents, emboldening cartels and suppressing innovation? Forfatter: Professor Alan Riley.

Discusses concerns arising from the German Bundeskartellamt's comfort letter indicating a willingness to tolerate an automotive licensing negotiation group to negotiate licences governing standard-essential patents, including that it facilitates the operation of a cartel, and may stifle innovation.

Self-preferencing that is discriminatory as a new type of abuse of dominance following the Google Shopping ruling of the Court of Justice of the European Union? Forfatter: Professor Francesco Rizzuto.

Discusses Google LLC v European Commission (C-48/22 P) (ECJ) and its approach to Regulation 2022/1925 when upholding a ruling that self-preferencing conduct by an online gatekeeper platform, favouring the display of results from its own search services, constituted discriminatory abuse of dominance.

Canada's Competition Bureau officially launches airline industry study. Forfatter: Emma Ghanem.

Examines the Canadian Competition Bureau's launch of a market study of competition in Canada's domestic airline industry. Examines its terms of reference, whether changes to the cabotage and foreign ownership rules would help, the challenge of serving remote communities, and what the study ignores.

Could compulsory licencing effectively enhance the accessibility of advanced therapy medicinal products (ATMPs) by addressing potential anti-competitive practices by their manufacturers? Forfatter: Blanka Bartos.

Examines the feasibility of introducing compulsory licensing to increase access to advanced therapy medicinal products (ATMP) in the EU, and combat abuse of dominance and excessive pricing by manufacturers. Reviews the main obstacles and considers alternative strategies such as franchise agreements.

**Flight of fantasy? The European Commission's Booking/Etraveli prohibition. Forfatter: Daniel Gore.**

Reviews Commission Decision in M.10615 Booking Holdings/eTraveli Group (EC), rejecting the economic framework of the non-horizontal merger guidelines when prohibiting a merger between online travel agents, in favour of an ecosystem-based theory of harm, and the implications for competition policy.

Canada: competition - infringement (Case Comment). Forfatter: Kaeleigh Kuzma.

Notes the Canadian Competition Tribunal ruling in Cineplex Inc imposing a 10-year prohibition order and a fine of approximately CAD 39 million on a company in the online movie ticketing industry for deceptive marketing practices involving drip pricing.

Czech Republic: anti-competitive practices – investigation. Forfatter: Tomáš Fiala.

Notes the Czech Competition Office's dawn raid on the web portal and search engine company Seznam.cz to investigate alleged anti-competitive conduct involving possible abuse of a dominant position through discriminatory distribution of online advertising revenue.

Denmark: mergers - merger control. Forfatter: Jens Munk Plum.

Notes the Danish Competition and Consumer Authority's September 2024 publication of guidelines on its power to require notification of mergers falling below the turnover threshold. Details key features of the call-in mechanism, including the time limits involved.

Finland: competition - market study. Forfatter: Maarit Taurula.

Notes the Finnish Competition and Consumer Authority's October 2024 publication of a report into how deregulation has affected competition in the country's taxi market, including its findings on price increases, regional variations and the operation of the tendering system for subsidised taxi rides.

France: anti-competitive practices - infringement (Case Comment). Forfatter: Emmanuel Reille.

Notes the French Competition Authority ruling of 21 May 2024, imposing fines of around EUR 77 million on four cartels in the pre-cast concrete products sector. Highlights key features of the test it used when finding a law firm that advised some cartel participants had not facilitated the cartel.

Hong Kong: anti-competitive practices - criminal prosecution. Forfatter: Sandra Marco Colino.

Notes the Hong Kong Competition Commission's launch of its first criminal prosecution under the Competition Ordinance against an individual who allegedly obstructed its investigation of a possible cartel between cleansing service companies by attempting to delete electronic communications.

Netherlands: mergers - merger control. Forfatter: Jotte Mulder.

Highlights the background to calls by the Dutch Competition Authority for additional powers to allow national competition authorities to investigate mergers below the existing turnover thresholds, following *Illumina Inc v European Commission* (C-611/22 P) (ECJ).

Portugal: competition – study. Forfatter: Bruno de Zêzere Barradas.

Notes a Portuguese Competition Authority study on competition dynamics in the generative artificial intelligence markets, including the challenges posed by data licensing agreements and shifts to proprietary data. Details proposed measures to reduce competition risks, such as pay-as-you-go pricing.

Portugal: competition – study. Forfatter: Bruno de Zêzere Barradas.

Notes nine recommendations by the Portuguese Competition Authority for promoting a national electric vehicle recharging infrastructure that is both efficient and competitive, including streamlined payment methods. Highlights the current obstacles to such a network, such as market entry barriers.

Romania: anti-competitive practices - infringement (Case Comment). Forfatter: Cristina de Jonge.

Notes the Romanian Competition Council ruling in All Businesses Management SRL / Cityplan Studio SRL / Enterprise Software Development SRL imposing fines of approximately EUR 270,000 on three companies for bid rigging in public procurement auctions for contracts involving archiving of documents.

South Africa: anti-competitive practices – legislation. Forfatter: Ryan Goodman.

Examines, by a comparative analysis with the EU framework, the operation and effectiveness of South Africa's Block Exemption Regulations for Small, Micro and Medium Sized Businesses 2024, highlighting possible reasons why no exemption applications have yet been made. Suggests possible reforms.

**Spain: anti-competitive practices - infringement (Case Comment). Forfatter: Pedro Callol.**

Notes the Spanish National Markets and Competition Commission ruling in SGAE, imposing a fine of EUR 6,387,819 on a collective rights management organisation for abuse of a dominant position, involving pricing practices when licensing intellectual property rights over musical and audiovisual works.

Spain: anti-competitive practices - infringement (Case Comment). Forfatter: Pedro Callol,

Notes the Spanish National Markets and Competition Commission ruling in Plataforma Fermar SL / Acacio SL / Serviline Foods SL / Asesores Llangon SL / Leonesa de Patatas SL / Hermanos Vidal SL / Fruticolas Ateca SL imposing fines of EUR 3,137,500 on food distributors for hospital food supply cartels.

Sweden: unfair trading practices - infringement (Case Comment). Forfatter: Stefan Perván Lindeborg.

Notes the Swedish Competition Authority ruling in Gronsakshuset i Norden AB, imposing a fine of SEK 3 million, its largest to date in terms of percentage relative to turnover, on a company in the agricultural and food products sector for unfair trading practices involving its late payment terms.

Sweden: mergers - merger control (Case Comment). Forfatter: Stefan Perván Lindeborg.

Notes the Swedish Competition Authority ruling in Axfood Investering och Utveckling AB / City Gross Sverige AB, unconditionally approving a merger in the grocery retail sector, involving a transition from joint to sole control. Details the main competition concerns in the Phase II investigation.

Turkiye: anti-competitive practices - investigation (Case Comment). Forfatter: Dr. Gönenç Gürkaynak, Esq.

Notes the Turkish Competition Board ruling in Ekolog Bilgi ve Kartli Sistem Hiz ve Tic AS, finding the terms of a licensing agreement used by a company in the computer-based psychotechnical evaluation test systems market were not an abuse of dominance, and did not justify a detailed investigation.

United Kingdom: competition - Green Paper. Forfatter: Jordan Bernstein.

Notes the main features of the UK Government's October 2024 Green Paper "The UK's Modern Industrial Strategy", highlighting potentially key sectors, the principles driving Government policy, efforts to combat "red tape", and the role of the Competition and Markets Authority in promoting growth.

Artikler fra European Competition Journal

Volume 20, issue 3, December 2024:

On the interplay between competition law and privacy: the impact of Meta Platforms case. Forfatter: Gorecka, Arletta.

In July 2023, the Court of Justice of the European Union (CJEU) issued a landmark judgment at the intersection of competition law and data privacy law. This article delves into two pivotal aspects: firstly, the recognition of privacy-related harms as factors within the realm of competition law considerations; and secondly, an examination of the role of competition law authorities in addressing infringements related to data protection. The analysis emphasizes the practical significance of the CJEU decision, asserting its importance rather than controversy. The judgment provides clarity on how regulatory rules can influence competition assessments and highlights the potential for competition authorities to consider the broader market and regulatory landscape without exceeding their mandate. The Facebook case, while not exhaustive, marks a crucial step in elucidating how regulatory rules influence competition assessments and how competition authorities can navigate broader market and regulatory considerations within their mandate.

Online travel agencies, minimum advertized prices and online intermediation services: some lessons from the Swedish Finnair case. Forfatter: Calcagno, Claudio.

In 2023, the Swedish Competition Authority adopted a decision accepting commitments from Finnair to reverse a policy implemented with online travel agencies. Specifically, Finnair was preventing online travel agencies from marketing Finnair airfares at a discounted level (relative to the airfares offered by Finnair to the online travel agencies) to customers who were searching for Finnair tickets online, in particular on metasearch websites. This case is noteworthy for three reasons. First, this commitments decision has commercial and strategic implications for the sector across the European Union. Second, while conflicting legal arguments were raised, the economic assessment was quite unequivocal, pointing to the challenged conduct being very likely to generate anti-competitive effects. Third, the Swedish Competition Authority's investigation overlapped with the entry into force of the 2022 European Commission's Vertical Block Exemption Regulation and showed some potential ambiguity in its interpretation and application, which the investigation's outcome has hopefully alleviated.



Charting the course of DMA's private enforcement: unveiling the forum shopping challenge. Forfatter: Margvelashvili, Tamta.

The Digital Markets Act (DMA) seeks to oversee major digital platforms – "gatekeepers," and their core platform services, aiming to break down barriers to competition enforcement within digital realm. Despite the DMA's absence of explicit mention of private enforcement, its spirit is clearly embedded within the framework. Several EU Member States have actively encouraged private enforcement of the DMA within their legislative processes. Considering the individual initiatives by the EU Member States, this paper addresses a concern: how to secure uniformity and consistency in the private enforcement of the DMA across the EU? This challenge is exacerbated by the looming threat of forum shopping, wherein plaintiffs strategically select jurisdictions to gain perceived advantages. As a solution, this paper advocates for the adoption of harmonization measures that strike a delicate balance between legal diversity and ensuring diligent oversight within the framework of private enforcement under the DMA.

Broad collection of consumer data by Big Tech: exclusionary or exploitative abuse? Forfatter: Hutchinson, Christophe Samuel.

The ability to gather and process large amounts of personal data is primarily held by a small group of companies. Some regulators, scholars, and practitioners have expressed concerns that major advertising-based platforms such as Google and Facebook may abuse their dominant position in the data market by requiring users to agree to the intensive collection of their data as a condition to the free access and use of those platforms' core services. This raises the question of whether such broad collection of consumer data should be examined by European competition authorities as a foreclosure aiming at excluding current and potential competitors from the market of consumer data or as an excessive collection of personal data having the effect of lowering user's privacy. This paper seeks to discuss this matter by examining the recent ruling in Meta by the European Court of Justice.

Balancing security and contestability in the DMA: the case of app stores. Forfatter: Meyers, Zach.

The EU's Digital Markets Act will require certain large tech firms' ecosystems to become more open. The Act contains few exceptions – but law-makers did include special protections for undertakings providing operating systems, like Apple and Google, to protect security. This paper explores how the Commission should assess these measures. It argues that security is not a "trump card" to undermine the Act's objectives – instead, Apple and Google must balance security benefits of their measures against any limitations on contestability. Furthermore, the Act should continue to allow both firms to differentiate their products' approach to security. However, Apple's (and to a lesser extent Google's) security measures are likely to be heavily disputed. The Act does not give the Commission effective powers to efficiently resolve such disputes nor to force gatekeepers to change their approaches to security.

No enforcement without representation: how participatory democracy can strengthen the Digital Markets Act. Forfatter: Neves, Inês.

While its relationship with competition law remains under debate, the Digital Markets Act (DMA) concerns fundamental rights, public values, and the control of power in digital markets. In limiting the scope of the freedom to conduct a business, the DMA seeks to safeguard conflicting and colliding fundamental rights and public interests. For the DMA to gain recognition as a legitimate and future-proof governance framework for digital markets, it must be based on participatory democracy. Meaningful participation in procedures that could impact one's position is a fundamental element of a democratic legal system governed by the rule of law. Although the DMA permits some form of dialogue, participatory democracy is constrained in scope, a bilateral logic rather than a multi-stakeholder approach is employed, and much is left to the discretion of the enforcer. Using a law-oriented and constitutional approach, we elaborate on how participatory democracy, engagement, and deliberation can be enhanced.

A fair share of sustainability benefits for consumers: the Horizontal Guidelines in the silent spring. Forfatter: Aránguez-Díaz, Pedro.

The revised Horizontal Guidelines provide a new framework to assess sustainability agreements. This article explores two pivotal aspects in the Horizontal Guidelines: individual non-use value benefits and collective benefits. By portraying sustainability as an economic rather than a moral benefit, the analysis delves into the foundations and methodologies used in these benefits and their fit into the existing caselaw, exposing shortfalls and controversies in their application. Building on this discussion, the article further explores the legitimacy of competition authorities to exercise distributional functions and decide on consumer preferences. The article overcomes the notion of sustainability as a non-economic goal in competition law, reveals key challenges in the future application of the Guidelines and aligns the economic discussion with the legal reality.



Artikler fra Journal of Competition Law and Economics

Volume 20, Issue 4, December 2024:

The Requisite Legal Standard of the Digital Markets Act's Designation Process. Forfatter: Alba Ribera Martínez.

Moving away from the effects-based approach in EU competition law, the Digital Markets Act introduces renewed requisite legal standards that differ from probabilistic standards of proof. Ideally, this concept should also shape the European Commission's initial enforcement actions and its judicial review in the EU courts.

The paper critically examines the legal standards that the European Commission established in its first set of designation decisions issued in September 2023. It spotlights two significant actions by the Commission: the delineation of core platform services and the consideration of the undertakings' rebuttals of the presumption of a gatekeeper position deriving from the application of the quantitative thresholds. The paper reveals a disjointed approach by the Commission building upon the idea of the regulation's plasticity.

Three Faces of Innovation Competition: Choosing the Framework for Horizontal Merger Assessment. Forfattere: Marcos Puccioni de Oliveira Lyra & Camila Cabral Pires-Alves.

This article discusses the assessment of horizontal mergers and harm to innovation when there is innovation competition. The goal is to establish a methodology for selecting the appropriate analytical framework for each situation, outlining mechanisms for recognizing innovation competition, defining relevant markets, evaluating the competitive significance of firms, identifying suitable theories of harm, and gathering pertinent evidence for each scenario. We review the literature on Competition Policy and on Economics of Innovation and take examples from the US and European case law. We also briefly discuss the strategic management literature to provide insights for the assessment. Considering post-merger reductions on innovation incentives as harm to innovation, we find differences of traditional merger procedure adequacy and challenges to build evidence, considering three faces of innovation, including possible combinations of these faces within a same merger case: (i) continuous innovation efforts in the product market, (ii) ongoing innovation efforts for developing new products, and (iii) future innovation efforts. In instances where the conventional approach to mergers falls short, exploring a capabilities-based assessment is recommended. Given the gaps found in the existing literature, we provide insights to the analysis as steps towards an agenda of capabilities-based merger assessment.

When Polanyi Met Competition Policy: Market Fundamentalism, Crisis, and Reform in The 21ST Century.

Forfattere: Arthur Sadami & Mateus Bernardes dos Santos.

Karl Polanyi and his analytical framework in economic sociology remain overlooked by competition policy scholarship. Notably, the concept of "embeddedness", central to Polanyi's contribution, offers a valuable perspective to trace the development of this regulatory mechanism over time. The social and political concerns of an emerging industrial society marked the birth of competition policy as a device for embedding the early 20th-century market economy. However, in the following decades, new market fundamentalist narratives disembedded markets, with competition policy contributing to this process by deviating from its non-market origins. Today, this governance tool faces the challenges of 21st-century civilization, with the celebrated consensus on its principles long lost. New social and political concerns arising from market power demand the re-embedding of markets through competition. This article explores this Polanyian dynamic of embeddedness-disembeddedness-re-embeddedness by reframing the history of competition policy in different institutional realities—the United States, the EU, and Brazil. It also discusses how diverse institutional conditions shaped alternative responses towards market fundamentalism throughout the past century. The revival of Polanyi's ideas not only helps us understand how we arrived here but also provides important insights into the inevitable role that "non-market" dimensions play in the reform agenda currently surrounding competition policy.

Social Media and Deceptive Patterns: A Way Forward for Antitrust Enforcement. Forfattere: Marcela Mattiuzzo & João Carlos Nicolini de Moraes.

The digital public sphere's significance, amplified by the COVID-19 pandemic, highlighted concerns on how the concentration of market power can shape social interactions. Antitrust, in particular, has faced calls for reform to better serve democratic goals in this context. However, experts disagree on whether antitrust should be geared towards achieving these objectives. This paper discusses antitrust's potential in fostering a healthier digital public sphere, particularly through the analysis of deceptive patterns deployed by social media platforms and their competition impact. It first discusses how the concept of deceptive patterns should be conceived—as there is no clear definition universally adopted in either academia or enforcement circles. It then moves on to explore ways to align traditional consumer-welfare antitrust analysis with this topic, by reviewing existing deceptive patterns' literature, looking at existing taxonomies and how they can help clarify effects on consumers, markets, and society, with a narrowed focus on social



media. Lastly, it attempts to offer a framework for the assessment of deceptive patterns in social media by antitrust authorities.

Competition and Industrial Policies: Complementary Action for EU Competitiveness. Forfattere: Joanna Piechucka, Lluís Sauri-Romero & Ben Smulders.

This paper contributes to the current debate about competition and industrial policies, by illustrating their complementary role in fostering competitiveness and economic growth. Further market integration combined with effective competition policy can unleash the long-term competitive potential of EU firms. Effective competition in domestic markets contributes to the global competitiveness of firms, by incentivizing them to be more efficient and innovative. Preventing inefficient exercise of market power benefits final consumers as well as firms that have access to inputs of higher quality at lower costs. Pro-competitive industrial policies are required to realize the competitive potential of EU firms, notably in the areas of innovation, technological adoption, and decarbonization, characterized by externalities, miscoordination, public goods, and uncertainty. Similarly, public intervention is required to achieve greater economic resilience efficiently, while considering inevitable interdependencies in the global economy. A balance must be struck between avoiding harmful trade wars and supporting EU firms in a challenging international environment.

Incumbent or Challenger? – Assessing Ecosystem Competition in the DMA. Forfatter: Jasper van den Boom.

This article examines the role of ecosystem competition and ecosystem power in designating gatekeepers under the Digital Markets Act (DMA). The study is prompted by ByteDance's objections to its designation, where it describes itself as a challenger instead of a gatekeeper. The article highlights the differing perspectives of ByteDance, TikTok's parent company, and the European Commission. ByteDance's 'challenger defence' rests on the idea that they lack ecosystem power. Despite its success within the core platform service, the size of their ecosystem of products is small in comparison to other gatekeepers. This would indicate that they are not entrenched. The Commission focuses on gatekeeper power, and views ByteDance as another incumbent gatekeeper. The Commission currently conducts a very limited assessment of ecosystem power when designating gatekeepers, making it difficult to determine the validity of the 'challenger defence'. Incorporating a more extensive assessment of ecosystem power and competition between ecosystem operators could enhance fairness and market contestability. Ignoring this aspect could lead to negative consequences and produce negative effects for users and competition in the long-term. The article proposes that there are benefits to contestability if the Commission expands its assessment to include ecosystem competition and offers suggestions on procedural implementation and effectuation of this broader analysis.

Artikler fra Journal of Antitrust Enforcement

Intet nyt.

Artikler fra Journal of European Competition Law and Practice

Volume 15, issue 7, October 2024:

What if the Super League Case Was about the Digital Market? Forfatter: Jean-Christophe Roda.

The Super League case has been widely commented on, particularly for its contributions to the regulation of the power of sports leagues. Beyond the realm of sports law, commentators have emphasised the pedagogical significance of the ruling regarding the theory of abuse of a dominant position. Less blatantly, it is also possible to read the Super League case as a major ruling concerning... the digital sector!

Implementing the DMA: the role of behavioural insights. Forfattere: Amelia Fletcher & Zita Vasas.

Key points:

- This article provides an overview of the role of behavioural insights in the implementation of the Digital Markets Act ('DMA'), a key plank of the EU's digital markets strategy.
- The effectiveness of several DMA provisions will in practice depend on their impact on end user choices and the way in which the designated gatekeepers design the choice architecture within their user interfaces will be critical for this.
- We provide some overarching considerations relating to this design and then discuss the relevance for specific DMA provisions of some key well-documented behavioural effects such as saliency effects, ranking effects, default effects, social cues, choice overload, information overload, choice fatigue, obfuscation and shrouding, complexification, framing effects, and timing effects.



- Our focus is on highlighting the potential issues, including in relation to circumvention risks, and we note where empirical testing by the gatekeepers is likely to be useful in order to demonstrate their compliance with the DMA.

Divided we fall? Grocery retail alliances under the lens of Article 101 TFEU. Forfattere: Philippe Chauve & Raffaele Di Giovanni Bezzi.

Buying alliances are used in different sectors of the economy where buyers get together to create a degree of bargaining power when jointly purchasing or negotiating with their suppliers. The present article will focus specifically on alliances between grocery retailers, ie those alliances created by groups of independent retailers, retail chains or retailer groups for engaging in joint purchasing (including joint negotiation). Grocery retail alliances ('GRAs') have been considerably debated in legal and economic circles from a competition policy perspective and beyond. On the one hand, manufacturers/suppliers of grocery products claim that GRAs are anticompetitive and a vehicle of unfair commercial practices. On the other hand, retailers vindicate the positive effects that GRAs generate for consumers, particularly by keeping retail prices down. On more than one occasion, the European Parliament (EP) invited the Commission to analyse the extent and effects of 'buying alliances' on the economic functioning of the agricultural and food supply chain. Over the years, competition authorities have been closely investigating GRAs and many of the existing ones have come under that scrutiny.

Fine Recalculations due to Insufficient Reasoning by the Commission: Cases T-106/17 JPMorgan Chase and Others v Commission, and T-113/17 Crédit Agricole and Crédit Agricole Corporate and Investment Bank v Commission. Forfatter: Darío Martínez Jove.

Judgments of 20th December 2023, JPMorgan Chase and Others v Commission, T-106/17, EU:T:2023:832, and Crédit Agricole and Crédit Agricole Corporate and Investment Bank v Commission, T-113/17, EU:T:2023:847.

The General Court recalculated fines for insufficient reasoning in a prohibition decision that it found could not be corrected through a subsequent amending decision, but only reduced the fine in one instance due to minor participation in the cartel.

Classifying a state measure as state aid as an indispensable precondition for that measure's compatibility assessment: Case C-40/23 P Commission v Netherlands. Forfatter: Małgorzata Cyndecka.

Judgment of 13 June 2024, Commission v Netherlands, C-40/23 P, EU:C:2024:492.

The Court of Justice for the very first time confirmed that the European Commission must establish whether a given state measure amounts to State aid within the meaning of Article 107(1) TFEU before ruling on that aid's compatibility with the internal market.

The New Irish Merger Control 'Call-in' Power of the Competition and Consumer Protection Commission to Require Notification of Sub-Threshold Transactions. Forfatter: Alan McCarthy.

Key points:

- In Ireland, the Competition and Consumer Protection Commission now has a 'call-in' power to require parties to notify a sub-threshold transaction for the Commission's prior approval where it forms a view that the transaction 'may ... have an effect on competition' in Ireland.
- While parties to such a sub-threshold transaction will self-assess if it would be likely to substantially lessen competition in Ireland to help gauge the level of risk of a call-in by the Competition and Consumer Protection Commission, the actual test for a call-in is wider and more flexible.
- The basis on which the Competition and Consumer Protection Commission will form its opinion on this broad test remains to be established.
- This development is a clearer legal mechanism for the Competition and Consumer Protection Commission to assess sub-threshold transactions (i.e. in line with the expanded application of Article 22 of the EU Merger Regulation regarding sub-threshold transactions and in international merger control more generally).

Vertical price fixing uncovered using the investigative powers of the ECN + directive in the Pfanner case – a closer look at the fundamental rights dimension of the investigative powers [Germany]. Forfatter: Sarah Legner.

Key points:

- In the Pfanner case, the Bundeskartellamt imposed a fine of almost EUR 800,000 for violation of the ban on cartels by means of vertical price fixing.
- The Bundeskartellamt gathered evidence by using the investigative powers which it obtained through the implementation of the ECN+ Directive in Germany.



- In observance of the Orkem principles, the powers to request information laid down by ECN+ Directive provide limited protection against self-incrimination.
- German competition law already allows natural persons to refuse to provide information if they risk being incriminated. In contrast, undertakings are less protected. They can only refuse to admit an infringement of competition law.

The UK's digital market regulation: the need for a proportionality principle in the CMA's new framework.

Forfatter: Miroslava Marinova.

Key points:

- The Digital Markets, Competition, and Consumer ('DMCC') Act has now received Royal Assent and will enter into force shortly, and the Competition and Markets Authority ('CMA') recently concluded consultation on its draft guidance for the new regime.
- The principle of proportionality is crucial in competition law enforcement, but there are concerns about its effective application under the DMCC Act due to the limited scope of judicial review.
- The absence of a full merits review in the DMCC Bill may hinder the thorough examination of proportionality in CMA decisions, potentially leading to the implementation of measures that are not proportionate to their objectives.
- Therefore, there is an urgent need for more detailed guidance from the CMA on applying the proportionality principle, aligned with the EU understanding and approach reflected in the Digital Markets Act ('DMA'), particularly in integrating efficiency considerations, to ensure the effective application of the principle.

Punishing the firm, not the individual: should former cartelists be sent to prison in the European Union?

Forfatter: Sophie Kümmel.

Key points:

- Even though their deterrent effect is well established theoretically, criminal sanctions in the form of prison sentences do not seem to be the optimal solution to decrease recidivism in the European Union ('EU').
- This is because they potentially do not sufficiently align with the EU's current leniency program, lack quantitative evidence on their deterrent effect, are costly, and enjoy little popularity in the EU.
- Instead, introducing rewards for whistleblowers and extending the immunity of the first leniency applicant to follow-on damage claims seem to be more well-established solutions to decrease recidivism rates in the EU.

Survey on competition law developments in the sports sector – January 2022 to June 2024. Forfattere: Sînziana Ianc & Aurélien Hömann.

The survey offers a comprehensive overview of the EU competition law and policy developments between January 2022 and June 2024, covering competition authorities and courts at both EU and national level.

Once considered exempt of the application of competition law due to its 'specificity', the sports industry and in particular the rules and sanctions imposed by sports governing bodies now face enhanced scrutiny under Articles 101 and 102 TFEU and the scope of the initial exemption is getting gradually more limited. The Court of Justice's established Meca-Medina doctrine is being re-shaped, with questions of interpretation and the scope of application challenging competition authorities and courts. Competition law enforcement is strongly driven by private complaints and litigation and the case law of the Court of Justice of the EU. Requests for interim measures are growing in importance. Moreover, national competition authorities also keep themselves busy with sports matters, ranging from investment and reclassification rules to no-poach agreements, with the German authority at the forefront.

Artikler fra World Competition

Volume 47, Issue 4, 2024:

Resale Price Maintenance in EU Competition Law: Understanding the Significance of Super Bock. Forfatter: Pablo Ibáñez Colomo.

The Court of Justice (ECJ) ruling in Super Bock is a significant development in EU competition law. The judgment marked the end of the Court's sui generis approach to resale price maintenance. Whether or not this practice amounts to a restriction of competition by object is now evaluated in light of the same factors against which the legality of the rest of practices is assessed (namely the content of the agreement, its objective aims and the economic and legal context of which it is a part). Accordingly, it is conceivable that, at least in some scenarios, resale price maintenance does not have, as its object, the restriction of competition. It remains to be seen whether the potential for change will be reflected in subsequent developments.

**The European Commission's Challenge to Consent or Pay: Demystifying the Digital Markets Act? Forfattere: Malte Frank & Emma Lewis.**

The European Union's (EU's) Digital Markets Act (DMA) was hailed as a new era of digital regulation following a decade of debates on the flexibility of traditional competition law. Article 5(2) DMA requires gatekeepers to offer users a choice to opt-out of the data exchanges across a gatekeeper's services. Half a year after becoming applicable, its fitness for purpose and theoretical underpinnings are in the spotlight as the European Commission (EC) investigates Meta's consent or pay solution on the assumption that such a model is not compliant. This paper considers whether this assumption is supported by an interpretation of Article 5(2) DMA and assesses the risks posed by the EC's position to the integrity of the DMA and its aim to revolutionize competition law.

Gatekeeping With Privacy: The Facebook Case, Apple's ATT Framework and Google's Privacy Sandbox. Forfatter: Thomas Weck.

Digital ecosystem operators can obtain an unmatched information advantage with respect to the preferences of platform users by implementing privacy-related regulation and relying on the attractiveness of their core platform services. Implementing privacy-related regulation may violate competition law if it is done in an exclusionary or exploitative manner, but not simply because following the rules increases entry barriers and the dependency of other online service providers. Where dominant digital ecosystem operators reap advantages in competition from simply following privacy-related rules in line with the prevailing market standards (in contrast to either deviating from market standards or transgressing privacy rules), the competition issue is one of market structure, not one of anticompetitive behaviour.

Extraterritorial Effects of the Digital Markets Act: The 'elusive long arm' of European digital regulation. Forfattere: Helena Drewes & Alexander Kirk.

The Digital Markets Act (DMA) will have significant extraterritorial effects: It applies directly – and with the exception of Booking.com currently exclusively – to non-European undertakings. It may shape markets beyond the EU single market: gatekeepers may decide to adhere to the EU standards on an international level and other jurisdictions may respond to the DMA with similar regulation. In this paper, we firstly assess the conditions under which digital regulation takes effect beyond the EU. We submit that the DMA meets these criteria in general as well as for specific obligations. Whilst it is difficult to establish which jurisdiction designed the blueprints of digital regulation and inspired others (concerning the de jure indirect extraterritorial effect), we found several strong reasons in favour of significant de facto extraterritorial effects of certain obligations. Secondly, we discuss whether it is legitimate that the EU imposes its understanding of how digital markets should work on other jurisdictions. We suggest to consider direct extraterritorial effects to be legitimate if there is a sufficient link to the jurisdiction and the regulatory competition is fair, i.e., if there is no (significant) asymmetry of power or the effects are proportionate to attaining digital sovereignty.

Self-Preferencing in Korea and Japan. Forfattere: Yo Sop Choi & Kazuhiko Fuchikawa.

The growing influence of big technology companies in the markets has brought multiple competition law cases around the world. At the same time, new theories of harm involving the conduct of big techs have resulted in discussions of new digital regulations or digital competition rules. The competition cases of self-preferencing are the starting point of these discussions. There are numerous antitrust cases dealing with self-preferencing in the European Union (EU) and Asia, particular in Korea and Japan. We have seen notable similarities between the West and the East. However, there are some differences between the competition regimes in the implementation of competition rules. The competition regimes in Korea and Japan have unique provisions on unfair trade practices (UTPs) that can widely deal with unfair conduct, including self-preferencing of algorithmic changes or manipulations that can harm third parties and/or consumers. Given the importance of business models involving algorithms, it is timely to analyse the self-preferencing cases in Korea and Japan and discuss the similarities and differences in the dialogues on digital regulations.

Analysing the Ex-ante Regulations in India's Digital Competition Bill and Its Effects on Indian Business Interests. Forfatter: Kolawole Afuwape.

The digitization of economic activity has important socio-economic development implications and at the same time creates challenges for antitrust analysis. These implications and challenges have been met differently in jurisdictions around the world. This paper makes a comparison of the ex-ante regulations between India's Draft on Digital Competition Bill with that of the European Union's (EU's) Digital Markets Act (DMA). India, like many technologically conscious jurisdictions, is introducing more demanding ex-ante regulations for its digital economy. The draft Bill centred on the work of a Digital Markets Economy; India's proposals are defined by an explicit commitment to 'pro-competition' regulation. This article traces the evolution and emerging design of the forthcoming Indian digital markets regime in comparison with the EU. The article proposes to expand the competition enforcement by adopting a 'rule-making' approach to reduce the market-wide uncertainty, and cost of litigation and reduce unexpected outcomes. The latter is founded on a hybrid-



mutual influence approach and intends to reduce the current inconsistencies existing between the regulatory and competition bodies in India.

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

Intet nyt.

Artikler fra International Review of Law and Economics

Volume 80, 2024:

Fighting free with free: Freemium vs. Piracy. Forfattere: Antoine Dubus, Christine Halmenschlager & Patrick Waelbroeck.

We analyze the optimal business model of a firm facing piracy. The firm either sells a premium version of its product, or also offers a free version along with the premium version. The firm can in turn impose restrictions on the use of the free version. Consumers can choose between the free and the premium version, but can also get an illegal digital copy. We show that freemium offers can reduce digital piracy by fighting free with free and that firms choose their optimal business model depending on the strength of copyright protection. Therefore, the strength of copyright protection can lead firms to choose a traditional business model rather than the new freemium model, impacting significantly the legal usage of the good.

Artikler fra Competition Law Journal

Volume 23, Issue 2, November 2024:

The conundrum of undistributed residues under the United Kingdom's collective proceedings regime. Forfatter: Rachael Mulheron.

As it nears its first decade of existence, the UK's opt-out collective proceedings regime is starting to give rise to a very particular conundrum as cases wend their way to judgment or settlement – the appropriate destination of undistributed residues. Whether an award of aggregate damages or global settlement sum is reached, not all class members may come forward to claim their individual compensation. Alternatively, it may not be feasible to distribute individual compensation to the class members directly. In those circumstances, a very considerable undistributed residue may arise. Although the UK legislature has ostensibly sought to stipulate what occurs to residues in the case of judgments, and has left it to the litigants to resolve in the case of settlements, that clear-cut division has been 'muddied' somewhat by recent and important appellate dicta. Moreover, there are several destinations to which undistributed residues may be transferred – some of them controversial. It is suggested that the 'guiding light' of any such distribution should be the compensation of the non-claiming class members via indirect means (including cy-près and escheat distributions), failing which compensation to the claiming class members, the funders of the action, or a reversionary distribution to the defendant, will be appropriate.

**A new frontier for competition litigation: private enforcement in digital markets following the DMCC Act.****Forfattere: Joe Williams & Naomi Reid.**

On 24 May 2024, the Digital Markets Consumer and Competition Act obtained royal assent. The DMCC Act establishes, inter alia, a bespoke regulatory regime for digital markets in the United Kingdom (Digital Markets Regime). This article considers both the scope for private enforcement under that Digital Markets Regime, as well as the potential impact that the Digital Markets Regime may have on the private enforcement of competition law in digital markets.

Unpacking the Digital Markets Act: a milestone ruling against ByteDance and its implications for potential gatekeepers. Forfattere: Christophe Humpe, Ciara Barbu-O'Connor, Gregory Dowell & Roque Botas-Armero.

The General Court of the European Union recently issued the first substantive ruling addressing the interpretation of the EU Digital Markets Act. In that ruling – in Case T-1077/22 *ByteDance v. Commission* – the General Court endorsed the European Commission's approach to applying the 'gatekeeper' criteria under Article 3(1) of the Digital Markets Act, confirming the Commission's decision to designate ByteDance as a gatekeeper in respect of its online social networking service, TikTok. This article explains the context in which the dispute between ByteDance and the Commission arose, including the process through which the initial group of gatekeepers was designated. It then goes on to dissect the General Court's reasoning and comment on its implications for future enforcement of the Digital Markets Act – particularly when it comes to the designation of additional gatekeepers and/or core platform services.

An Oasis or a mirage? How dynamic pricing is assessed under UK competition and consumer protection law.**Forfattere: Jackie Holland, Henry Mostyn & Anders Jay.**

This article explains the consumer protection and competition law rules that apply to dynamic pricing in the United Kingdom. It describes the framework for assessing dynamic pricing under current and incoming UK legislation (including the Digital Markets, Competition, and Consumers Act 2024). It explains what dynamic pricing is, and how this has to date been regarded by the Competition and Markets Authority and other agencies. It then provides a summary of potentially applicable competition and consumer rules. Finally, it sets out a list of recommendations for businesses considering dynamic pricing strategies.

Assessing information exchange among competitors in financial services markets. Forfattere: Reinder Van Dijk, Tim Jenkinson & Vanessa Pham.

The exchange of certain types of information among competitors can trigger competition law concerns, as it may heighten the risk of market coordination or lead to the exclusion of competitors not involved in the exchange. Yet, under certain conditions information sharing may also offer benefits. This article discusses two key examples in financial services where evaluating information exchange requires a detailed understanding of the unique dynamics within those markets: the 2010 Office of Fair Trading investigation into information sharing among motor insurance companies which serves as a landmark for assessing the pro-competitive benefits of information exchange in financial products, and the 2019 Financial Conduct Authority competition investigation into information exchange among asset managers during initial public offerings. The IPO case is an important case that highlights the complexity involved in determining the boundary between beneficial and harmful information exchange.

Artikler fra European Competition and Regulatory Law Review

Volume 8, Issue 4, 2024:**Sustainability Agreements in Light of the European Commission's Horizontal Guidelines: The Path Towards Greening Competition Enforcement. Forfatter: Joana Fraga Nunes.**

The adoption of the revised Horizontal Guidelines, containing a new chapter dedicated to sustainability agreements alone, marks an important step for the green transition, illustrating how stakeholders can collaborate by engaging in sustainability agreements. However, given the novelty of the Horizontal Guidelines, there has been no established interpretation of the relevant concepts and no guidance regarding the nature of enforcement of National Competition Authorities and whether a collaborative or coercive approach should be anticipated from National Competition Authorities and the Commission (together, the enforcers). Guidance on collaboration between enforcers and stakeholders is just as necessary as the guidance provided in the Horizontal Guidelines for competitors. Ultimately, this collaborative effort ensures that sustainability becomes an integral part of competition law compliance, fostering a harmonised approach to achieving economic competitiveness and environmental sustainability. By striking this balance and integrating sustainability considerations into business practices, collaboration becomes more feasible, thereby making competition and its enforcement greener.



Assessment of the Context in Determination of By Object Restrictions – How Deep to Go? The (Extended) Context Criterion in Action. Forfatter: Mária T. Patakyová.

It has been almost a dozen years since the judgment in Case C-32/11 Allianz Hungária was delivered. One of the surprises brought by this decision was the introduction of the 'Extended Context Criterion', that is taking into consideration "the real conditions of the functioning and structure of the market or markets in question".¹ As this line of analysis was followed by another well-known case, Case C-67/13 P Groupement des Cartes Bancaires, it seemed that a new normal was established. However, several judgments delivered after 2013/2014 did not contain the Extended Context Criterion. Cases from 2023 and 2024 seem to be even more perplexing. This article dives into the case law of the CJEU to establish when the Extended Context Criterion is used. The Extended Context Criterion seems to be the new normal; however, it is not clear whether it has not watered down.

Belgium: Advice of the Belgian Competition Authority on Legal Price Fixing Measures in Favour of the Agricultural Sector: A Renewed Balance between Agricultural Policy and Competition Rules? Forfatter: Jeroen Dewispelaere & Rasmus Van Heddeghem.

Czech Republic: Czech Competition Authority Looking for New Powers. Forfatter: Michal Petr.

Norway: Yet Another Loss for the Norwegian Competition Authority – Standalone Information Exchange Between Publishers Was Not A By Object Restriction. Forfatter: Haakon Rønn Stensæth.

Slovakia: Increasing Scrutiny of Anticompetitive Agreements in Employment Law: The Slovak Antimonopoly Office's Approach. Forfattere: Peter Hodál & Miriam Mojžišová.

Case C-671/15 French Endives Case: Further Clarifications on the Interplay between Common Agricultural Policy and Competition Law in the EU. Forfatter: Andrés Borja Alcaraz Riaño.

Case C-298/22 The Portuguese Banco Preliminary Ruling: 'Standalone' Information Exchange as a Restriction of Competition by Object? Forfatter: Martin Gassler.

Joined Cases C-611/22 P and C-625/22 P – Illumina/Grail: The Continued Search for the Panacea to the Killer Acquisition Conundrum. Forfatter: Chris Grech.

Self-Preferencing as a New Theory of Harm: the CJEU's Confirmation in Google Shopping. Forfattere: Anush Ganesh & Gaurav Pathak.

Predatory Pricing in High-Tech Markets: Lessons from the General Court's Qualcomm Judgment. Forfattere: Anush Ganesh & Mohit Yadav.

Artikler fra Communications Law

Intet nyt.

Artikler fra Computer and Telecommunications Law Review

Volume 31, Issue 1, 2025:

The public enforcement of the EU Artificial Intelligence Act: building on the national market surveillance system - part one. Forfatter: Francesco Rizzuto.

This, the first part of a two-part article on the institutional framework of bodies, systems and procedures under Regulation 2024/1689 (the Artificial Intelligence Act), examines governance and enforcement at the EU level.

EC computing, telecommunications and related measures. Forfattere: Quentin Archer, Hannah Schofield, Mary Foord-Weston & James Sharp.

Summarises the status of EC legislative measures on electronic communications, Directive 2002/22 (Telecoms Framework Directive), the Competitiveness and Innovation Framework Programme, electronic commerce, electronic signatures, network security, cybercrime, cybersecurity, the Information Society, technological development, telecommunications, broadcasting, satellite, intellectual property rights, data protection, and taxation.

**US federal computing, telecommunications and related measures. Forfatter: David E. Halliday.**

Summarises the status of US federal legislative measures on electronic commerce, cybercrime and security, the internet, the Information Society and e-government, intellectual property, telecommunications and broadcasting, data protection and privacy, taxation and outsourcing.

Artikler fra Global Competition Litigation Review

Volume 17, Issue 4, 2024:

The presumption of the legality and the binding effect of Commission competition law infringement decisions that are not final. Forfatter: Francesco Rizzuto.

Comments on Heureka Group as v Google LLC (C-605/21) (ECJ) on a follow-on action for damages based on a Commission Decision even though the Decision itself was subject to be appealed.

Exercising jurisdiction in competition damages claims concerning online app stores: a complex question.

Forfatter: Dr Grant Stirling.

Comments on Ennis v Apple Inc (CAT) on UK jurisdiction and applicable law in a dispute about losses incurred from anticompetitive conduct by way of online app stores.

Commitment decisions and private antitrust enforcement: searching for a needed convergence. Forfatter: Enrico Camilleri.

Discusses the implications for private enforcement of competition law of the increasing trend towards acceptance of commitment decisions in more serious competition law violations.

Competition Appeal Tribunal jurisdiction in cross-border antitrust damages claims. Forfatter: Levon Curtis.

Discusses whether UK consumers are adequately protected against competition abuses by global technology multinationals, in view of the limits of the tribunal's jurisdiction to hear damages actions, the doctrines of qualified effect and implementation, and the service abroad rules.

Does independence of national competition authority matter for private antitrust enforcement? Forfatter: Dominik Wolski.

Discusses how issues affecting the independence of the national competition authority from the government have an impact not only on its public enforcement work but also on private enforcement proceedings, especially on cases against state-controlled companies.

A coda to a suggested approach for arbitrators in complex competition/antitrust disputes. Forfatter: Richard C. Levin.

Expands the author's previous article on arbitration instead of litigation to resolve complex disputes about the private enforcement of competition law, exploring techniques for presentation of expert evidence, and European cases on "second look" judicial review.

The Law and Politics of Global Competition. Influence and Legitimacy in the International Competition Network (Publication Review). Forfatter: C. Townley.

Artikler fra Market and Competition Law Review

Intet nyt.

Andre udenlandske artikler

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Event: The More Economic Approach 20 years down the road. What went wrong?

Date: Monday, February 3, 2025.

Time: 12.00 to 16.00.

Location: Copenhagen Business School and online.



In 2005, DG COMP presented its Discussion Paper outlining how to align Article 102 with modern economic theory and thinking. An essential component in this was the introduction of the As Efficient Competitor (AEC) test, offering a path for evaluating (alleged) priced-based abuse. This led to the Enforcement Paper in 2008. Officially, indicating how enforcers should or could prioritize cases, but in reality, also limiting their scope for intervention. Opinions differ regarding the success of the more economic approach and the AEC test, but the adoption of this has undeniably raised the bar for building an Article 102 case. According to DG COMP, it has even led to under-enforcement, commanding a review. Celebrating the 20th anniversary of the Discussion Paper, CCLL has organized an event casting light upon how and why we got the Discussion Paper and the AEC test, its impact on enforcement, and what DG COMP would like to replace the AEC test with.

[Læs mere](#)

Dato: 03/02/2025