



Copenhagen 13th – 15th June 2019

**NETWORKS IN A SINGLE MARKET:
Competition law and regulated network markets**

Programme of the 18th Annual Conference

*co-organised by the Association of European Competition Law Judges,
the European Commission & the Maritime and Commercial Court of Denmark*

Theme Regulated network markets have, over the years, been opened up to competition notwithstanding the challenge of sustaining innovation and investment. National authorities, both competition and regulatory authorities, and both national and EU courts have played and will continue to play significant roles in both public and private law. We shall explore a variety of ways in which competition law can tackle obstacles to such regulated network markets being effectively competitive.

Summary **Thursday 13th June 2019**

Executive Committee

Opening Reception

Friday 14th June 2019

The Main Conference and

Programme for accompanying persons

The conference dinner

Saturday 15th June 2019

National updates

Annual General Meeting of the Association

Sub-topics We envisage four sessions during Friday:

1. Introducing competition and its regulation in energy and telecommunications;
2. Market definition, dominance, mergers and concerns about abuse;
3. Issues in economics, costing and pricing
4. Looking to the future:
 - a. Fresh monopolies, dominance and collective dominance;
 - b. Oligopoly
 - c. Encouraging innovation and investment in the longer term – regulation, competition law enforcement and predictability

Host Court We are grateful to the Maritime and Commercial Court that was founded in 1862 for being our host court this year and to Henrik Rothe, the immediate past President and to his successor, Ole Græsboell Olesen, and to Vice President Mads Bundgaard Larsen, for their work with Danish colleagues on making local arrangements.

In this Court, the cases are decided by a panel consisting of one or three of the Court's professional judges, and two or four assessors. The Court has around 130 assessors, all who are mostly recommended by business organisations. There are also assessors who have particular experience in consumer affairs, shipping, and employment related matters. Each of the assessors has a particular insight into one or more of the areas of law that the Court covers.

Competition law history and current colleagues

History Back in 2000, the OECD reflected on the steps being taken to reform Danish competition law in the 1998 legislation which, as in the UK at the same time, adopted the EU's "prohibition" principle and the basic texts of EU competition law.

Denmark's challenge is to establish competitive habits and institutions in a society that has exalted co-operation and consensus, in economic as well as political matters. For 70 years, Denmark's competition laws did not prohibit anti-competitive agreements and behaviour, trying instead to regulate the abuse of market power and the prices in horizontal agreements. The result has been industry sectors that are capable of competing internationally co-existing with a culture of non-competitive co-operation in domestic markets. Denmark has recently strengthened its competition law, most importantly by declaring that agreements restraining competition and abuses of dominance are prohibited. (OECD, 'Regulatory Reform in Denmark', 2000)

This represents a fundamental change from the recent past. The basic policy goal now being pursued, of efficiency achieved by "workable competition," should help competition policy institutions support reform.

NCA etc The Kingdom of Denmark is served by the Danish Competition and Consumer Authority, Director General Jakob Hald; the Danish Competition Council, President Christian Schultz and by the Danish Competition Appeals Board whose President is also a member of the Association, Jon Stokholm, a Justice of the Supreme Court. We hope that the named individuals will join us for Friday's conference.

Analyses The seven member Competition Council has overall responsibility for the administration of the Competition Act and determines the strategic goals. The Competition Council can decide which analyses the NCA will produce though the minister may also request a competition analysis.

Energy In the energy field, Denmark had a new regulatory authority formed last July: the Danish Utility Regulator overseeing electricity, natural gas and heat with Director General Carsten Smidt who has been invited.

Telecoms For telecommunications, the Danish Business Authority, under Director General Katrine Winding, aims to regulate the telecoms sector to ensure fair competition, so that businesses and citizens alike can benefit from reasonable pricing and a broad range of choices. As elsewhere in the EU, this is done by analyzing the competitive situation in the market, creating models for pricing, and making decisions concerning interconnection agreements. The Danish Business Authority carries out analyses of the competitive situation in the telecommunications market (market reviews) at regular intervals. LRAIC (Long Run Average Incremental Costs) is one of four pricing methods that may be adopted by the Danish Business Authority in connection with the pricing of interconnection products. The Authority also supervises the incumbent's reference offer. Interconnection agreements are to be made on commercial terms.

We also hope to meet local practitioners in competition law and economics.

Venues **The Commission has selected the Copenhagen Admiral.** This is a four-star waterfront hotel surrounded by the city's best shopping, the leading theatres and major tourist attractions and affording superb views of the Opera House, the Royal Playhouse and the charming inner harbour. The Royal Palace, Amalienborg, and the Amaliehaven gardens are less than a minute away while the Little Mermaid and the impressive Gefion Fountain are both just a short walk along the waterfront. The Commission is holding rooms for their invitees and the Association is holding some additional rooms - booking details for these extra rooms are below.

We are privileged to have **our opening reception** in the old Stock Exchange in the centre right next to the Parliament; this is a great and very beautiful location just 5 minutes by taxi or 15/20 minutes by foot from the hotel. There will be some light refreshments – some attendees may wish to dine later.

Our Friday Conference is in Eigtveds Pakhus; this is right next to the waterfront and facing the hotel at the other side of the harbour. A lovely old but very modern building originally (as the name says) a warehouse by the water. Today a very modern conference centre owned by the state.

It is 1,3 kilometers walking distance from the hotel. 15 minutes by taxi (because there is a nearby bridge for walking but not for driving)..

Our Friday dinner will be at the National Museum of Denmark in Prinsens Palais, a royal palace from the 18th century on the Frederiksholms Canal, again centrally situated.

On Saturday our EU and national updates and annual general meeting is also in in Eigtveds Pakhus

[Security] *Please bring a passport or identity card to each venue*

Commission The European Commission will pay for air/rail travel and accommodation
Invitations: for 56 judges/speakers, based on two per Member State. Additional judges are welcome but their fares and accommodation would not be funded by the Commission.

Hotel: This year the Commission has a block booking at the Admiral Hotel for those judges and speakers who receive Commission invitations and for whom the Commission's agents will make bookings. The Commission will expect invitees to pay for any nights beyond those of 13th and 14th and or for additional costs of accompanying persons.

The hotel is exceedingly popular and getting additional rooms has not been easy. The Association has arranged to hold additional rooms that those not on the Commission list and it may also be possible to book online. Copenhagen is quite expensive and a junior suite for one or two people is DKK 3085.00 per night per suite (approximately 411 Euro per night per suite. Harbour view cannot be guaranteed; the breakfast buffet is DKK 170.00 per person per day (approximately 23 Euro per person per day); if you wish to book such a room please let us know.

The airport Metro Station is connected to Terminal 3 and the Metro operates with 4-6 minute intervals during the day and early evening and with 15-20 minute intervals at night. You should take the Metro to the **Kongens Nytorv** station, which is 750 metres from the hotel. You should buy tickets from the vending machines. An adult single trip ticket from the airport to the city centre costs 36 DKK (approx. 4,8 Euro).

Of course, you can take a taxi right to the door of the Admiral Hotel. The final price is dependent on the time of the day but the "distance" price is approximately DKK.300 (about 40 euro).

Fees: Judges € 200 for the conference which includes membership and € 150 for each accompanying person. These fees include the conference dinner.

Judges will be sent a request for payment via the PayPal system.

Registration: Judges should contact the Association via aeclj@catribunal.org.uk; the Secretariat is provided by the UK Competition Appeal Tribunal +44 20 7979 7979

Thursday 13th June 2019

15:00 (TBC) **Executive Committee** – meeting at the Maritime and Commercial Court

18:00 (TBC) **Opening Reception**

Ole Græsbøll Olesen, from 1st February 2019. President of our host court, will welcome us and introduce

Thomas Rørdam, President of the Danish Supreme Court, who will talk about the experience of his court in competition law

Marina Tavassi, President of the Association, will respond

Friday 14th June 2019**The Main Conference**

08:30 Registration open for participants – proceedings will start at 09:00 with lunch between 12:30 and 13:30 and finishing at 17:00

Opening **In the chair: Marina Tavassi**, President of the Association

Anna Vernet, who heads the Unit on DGComp looking after the European Competition Network and relations with national competition authorities and the competition law judges for the European Commission, is expected to provide something of a “roadmap” to the challenges being faced in this area across Europe

1. Introducing competition, its regulation in energy and telecommunications and a transition from sectoral regulation to generic competition law;

a. Of course, we are aware of the desire, reiterated in the new European Electronic Communications Code, Directive (EU) 2018/1972, to move from sectoral regulation to using normal Article 101/102 law;

b. We are also aware that Articles 101/102 and 107/108 get engaged in both markets;

c. We shall consider how regulation and competition have come hand by hand in the last decade (following DGCOMP’s sector inquiry and then the so called Third package of Gas and Electricity Directives) and how this has affected the institutional design of some competition agencies and regulators (OFGEM-UK, ACM-Netherlands, CNMC-Spain);

d. We shall hear how European and national energy laws derive from concepts in competition law and must be interpreted in the light of that; in both energy and telecommunications issues arise about access to networks at international, national and local levels; wholesale tariffs have been related to efficient costs and managed to promote retail competition.

Beatriz de Guindos Talavera, Director of Competition, Spanish Competition Authority

Torsten A. Andersen - Deputy Director-General, Danish Business Authority

Bitten Thorgaard Sørensen – Deputy Director General, Danish Competition and Consumer Authority

2. Market definition, dominance, mergers and concerns about abuse:

a. In this second session we may touch on mergers, State aid and abuse where defining markets can be important;

In the chair: Wolfgang Kirchhoff, Federal German Court of Justice

Keynote speaker: Guillaume Lorient, DGComp - Director C — Markets and cases II: Information, Communication and Media

Practical experience in the Netherlands and Germany

Heico Kerkmeester, the Administrative High Court for Trade and Industry, and **Wolfgang Kirchhoff**

3. Issues in economics, costing and pricing:

a. Price controls themselves tend to fall into regulatory consideration and

b. Last year, when considering healthcare, including pharmaceuticals, we had a panel on excessive pricing so we might avoid that but we might also address margin squeezes

In the chair: Jon Stokholm, a Justice of the Supreme Court and President, the Danish Competition Appeals Board

Claus Kastberg Nielsen, Founder of Copenhagen Economics and managing partner Brussels – how has the appreciation of such issues been developing in the light of nearly 40 years of experience of competition and price controls in Europe (TBC)

Practical experience in Italy

Carlo Scarpa, Professor of Economics, Università degli Studi di Brescia, and sometime expert appointed to advise the Court of Appeal, Milan

Marina Tavassi, President, Court of Appeal, Milan

4. Looking to the future is our fourth session – you may have your own ideas for this session and I would be glad to hear them; it will conclude with the Commissioner looking ahead; areas that we have thought about are:

a. Fresh monopolies, dominance and collective dominance and co-investment;



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- b. That links to thinking about oligopoly and oligopolistic behaviours;
- c. Encouraging innovation and investment in the longer term – regulation, competition law enforcement and predictability;
- d. Capacity and capability issues include security, renewables/sustainability, State aid....

In the chair: Henrik Rothe, the immediate past President of the Maritime and Commercial Court

Pier Luigi Parcu, Professor & Director, Florence Competition Programme in law and economics, European University Institute – considering electronic communications

Henrik Ballebye Okholm, also of Copenhagen Economics, who is also an expert assessor at the Maritime and Commercial High Court – considering energy

1630 **Margrethe Vestager**, a Danish politician since the age of 21 who has served as the European Commissioner for Competition since 2014. She was the political leader of the Danish Social Liberal Party party from 2007 to 2014, and served as Minister of Economic Affairs and the Interior from 2011 to 2014.

1700 *Close of the conference day*

Friday Programme for accompanying persons

10:00(TBC) Our hosts plan a visit to Louisiana, a leading international museum of modern art. Located on the coast it strikes that rarest of balances between landscape, architecture, and art. It is located 25 miles north of Copenhagen, with a panoramic view of Sweden across the Sound and there will be a train trip included and also lunch.

The Conference Dinner

1930 *There will be instructions on how to get to the National Museum*

Saturday 15th June 2017

Chairmen: **Ingeborg Simonsson**, Stockholm District Court, Patent- and Market Court

Wolfgang Kirchhoff, Federal German Court of Justice

09:30 **National updates 1**

11:00 Coffee break

11:30 **National updates 2**

12:30 **Marina Tavassi**, President AECLJ, takes the chair for the Annual General Meeting of the Association

13:30 Lunch

Optional

15:00(TBC) Our hosts are suggesting a boat trip (around 90 minutes) with an additional cost of 95 DKK (about 12.70 euro).

Acknowledgement – the coat of arms of the City of Copenhagen has been used with their kind permission