

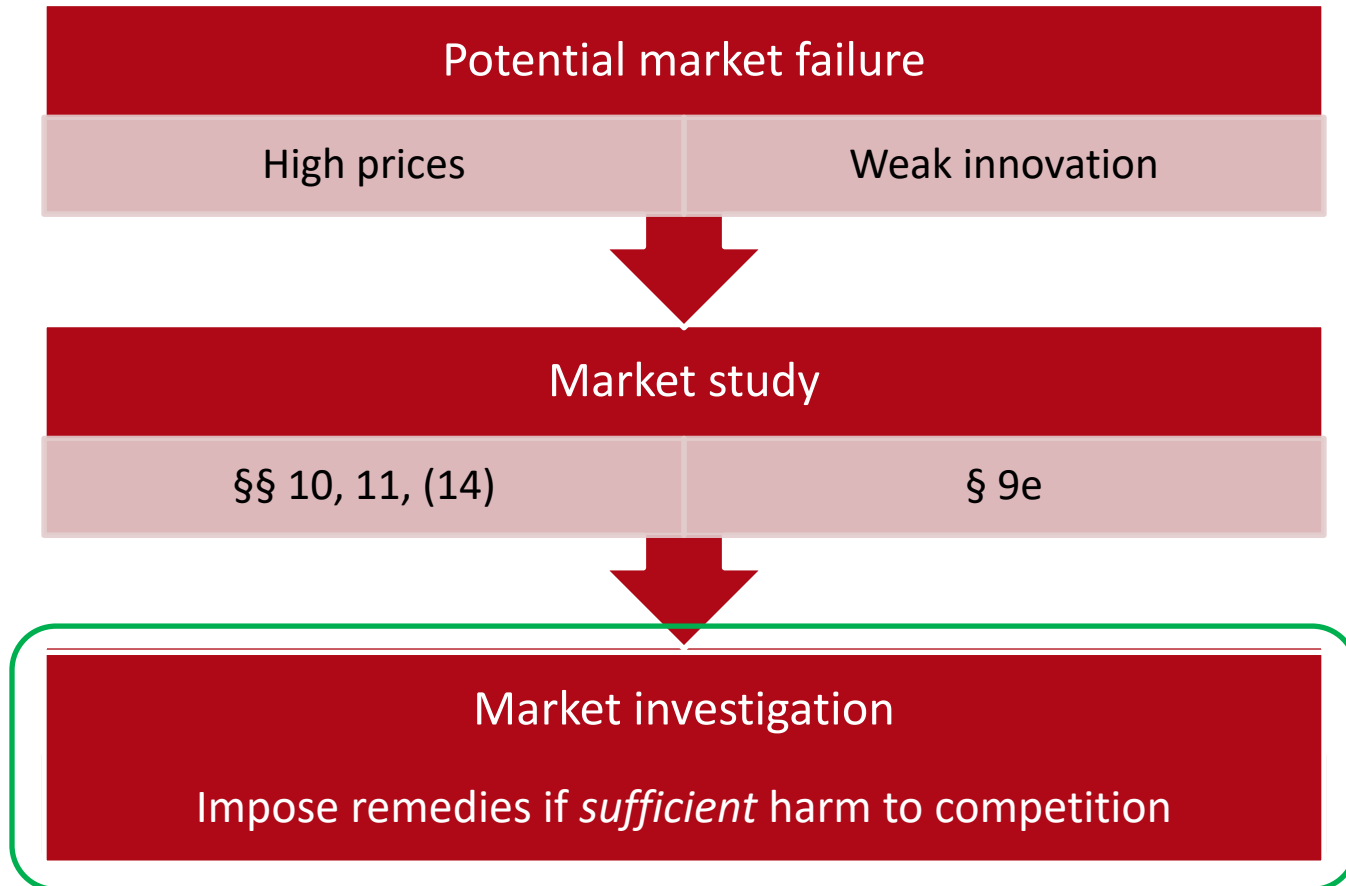


Main reasons for introducing a market investigation tool

Hans-Petter H. Hanson

21.10.2022, Beccle - Bergen

Market investigation tool



Plan

1. Competition policy fit for the modern economy

2. Market investigation in Europe

3. Market investigation in Norway

Competition policy fit for the modern economy (I)



- ***“Being open to new [legislative] ideas is especially important now because markets are going through enormous changes as a result of continuing technological developments.”***



- ***“The specificities of competition in the digital world can make market power sticky, and there is legitimate fear that the market power [large platforms] have acquired will be hard to challenge”***



- ***“Sustainability outcomes are normally best achieved when firms compete. Competition policy and enforcement may contribute to advancing sustainability objectives”***



- ***“The competition policy plays a vital supporting role in helping us achieve our green goals”***



Competition policy fit for the modern economy (II)

“Protecting competition is about efficiency, but not only. Fundamentally, it is a question of fairness.

We don't often think of our work in terms of social policy, but in fact that is what it is. By keeping prices close to cost, this generates consumer surplus, benefitting low-income households the most.”



Innlegg Hans-Petter H. Hanson

Sterkere konkurranse gir mindre ulikhet

USAs president, forskere, EUs konkurransemyndigheter og LO er enig: Bedre konkurranse gir økonomisk omfordeling. Økt lakseskatt kan til sammenligning bli som vekslepenger å regne.



¹ EUs konkurransedirektør, Margrethe Vestager, fastslo denne uken at en velfungerende konkurransepolitikk er aller viktigst for dem med lavest inntekt, skriver Hans-Petter H. Hanson. Foto: Hanna Johnsen



Hans-Petter H. Hanson

Hans-Petter H. Hanson, seniorrådgiver i Konkurransetilsynet

● Statsbudsjettet er her, og utjevning av inntektsforskjeller ser ut til å være viktig for regjeringen. Klingende mynt skal overføres fra milliardærer til menigmann. Skattepolitikk kan være et målrettet virkemiddel, men det er viktig å huske på at en aktiv konkurransepolitikk også er en god oppskrift på effektiv omfordeling.

Konkurransepolitikken er først og fremst utformet for å fremme virksom konkurranse i enkeltmarkeder. Dette bidrar til at samfunnet som helhet utnytter ressursene effektivt.

Med andre ord: God konkurranse gjør det mulig å bake et større brød. Konkurranspolitikken vil imidlertid også kunne påvirke fordelingen av brødet. Dersom man tillater at bedriftene øker sin

Økt lakseskatt blir til sammenligning nesten som vekslepenger å regne

Dette er bakgrunnen for at konkurransemyndigheter og forskere verden over fatter økt interesse for hvordan en aktiv konkurransepolitikk kan redusere ulikhet. Konkurransedirektør i Europakommisjonen, Margrethe Vestager, slo i en tale denne uken fast at en velfungerende konkurransepolitikk er aller viktigst for dem med lavest inntekt.

I Danmark har konkurransemyndighetene nettopp gitt ut en rapport som viser

Også analyser som LO har gjort her hjemme er inne på det samme: Konkurranspolitikken er avgjørende for at den norske modellen for lønnsdannelse skal virke etter hensikten.

Det hefter selvsagt usikkerhet ved slike analyser. Men retningsen er klar: Aktiv konkurransepolitikk bidrar til omfordeling. Konkurransedoggingen, slik den er utformet i dag, vil langt på vei være tilstrekkelig for å legge til rette for dette.

Samtidig har flere europeiske konkurransemyndigheter tatt til orde for at det er behov for nye verktøy for å temme markedsmakten til store bedrifter. EUs regulering av digitale plattformmarkeder er et eksempel på dette.

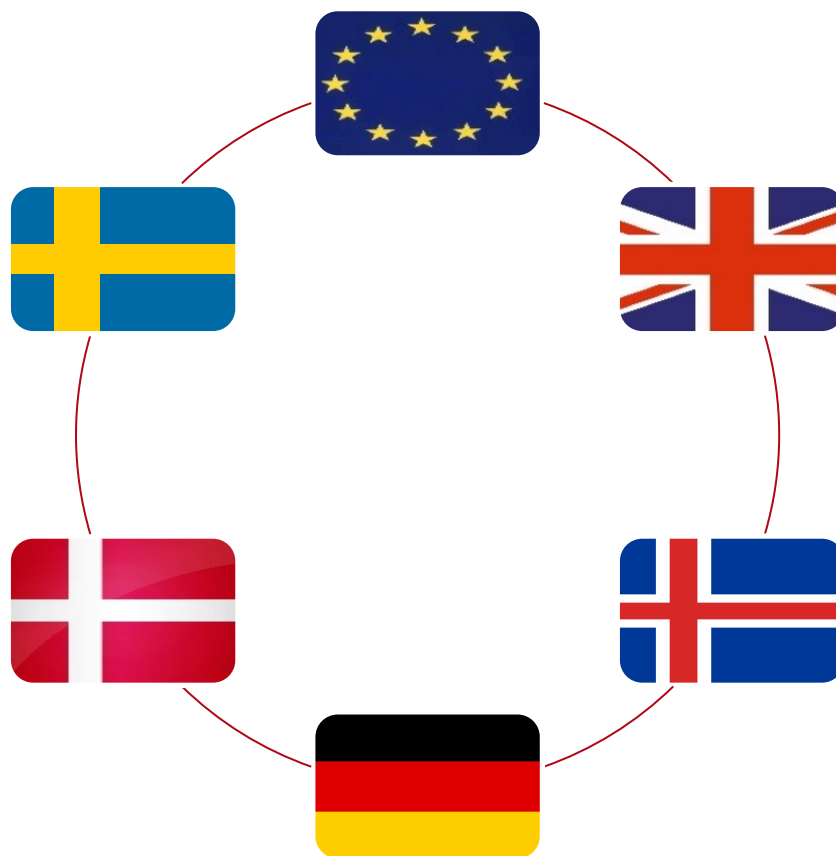
Et markedsetterforskningsverktøy, som



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Market investigation in Europe



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Pillar 1

- Traditional competition law
- TFEU 101
- TFEU 102

Pillar 2

- Ex-ante regulation
- Digital Markets Act (DMA)

Pillar 3

- New Competition Tool
- Market-investigation
- Remedies



Market investigation in the EU (I)



Structural market characteristics may lead to tipping markets or increase barriers to entry

- Economies of scale (data)
- Network effects
- Switching barriers



Behaviour not caught by conventional competition law

- Risk of tacit collusion due to algorithm-based technological solutions
- Unilateral behaviour from non-dominant firms



Market investigation in the EU (II)

Year	Author	Discipline	Title
2020	Massimo Motta og Martin Peitz	Economics	<i>Intervention triggers and underlying theories of harm</i>
2020	Pierre Larouche og Alex de Streel	Law	<i>Interplay between the New Competition Tool and Sector-Specific Regulation in the EU</i>
2020	Heike Schweitzer	Law/ Economics	<i>The New Competition Tool: Its institutional set up and procedural design</i>
2020	Patrick Rey, Monika Schnitzer, Gregory Crawford	Economics	<i>An Economic Evaluation of the EC's Proposed «New Competition Tool»</i>
2020	Richard Whish	Law	<i>Legal comparative study of existing competition tools aimed at addressing structural competition problems, with a particular focus on the UK's market investigation tool</i>

Market investigation in the EU (III)



«Intervention triggers and underlying theories of harm»

- *"We submit that it would be desirable to integrate the existing competition tools with the NCT, which may help promote effective competition in situations where markets do not work properly."*



"An Economic evaluation of the ECs Proposed "New Competition Tool"

- *"We see a strong case for the introduction of a New Competition Tool to address factors like [tacit collusion] that prevent effective competition in the market. [...]. A new competition tool would fill an important gap."*



Market investigation in the EU (IV)



“Stakeholder Consultation 2020”

- “Respondents generally agreed that there are structural competition problems that Articles 101/102 TFEU cannot tackle or address in the most effective manner. Respondents also generally agreed that an NCT could help address the limits of existing competition rules”



“European Competition Network (ECN)”

- “NCAs generally agreed that there exist certain features that may lead to competition problems that 101&102 TFEU cannot tackle conceptually. There was a consensus among NCAs with relevant experience that there was a need for a new competition tool to deal with structural competition problems”



Market investigation in the EU (V)



“Intervention triggers and underlying theories of harm”

- *“A dominance-based competition tool would not address several forms of consumer harm that are due to competition problems.”*



“An Economic evaluation of the ECs Proposed New Competition Tool”

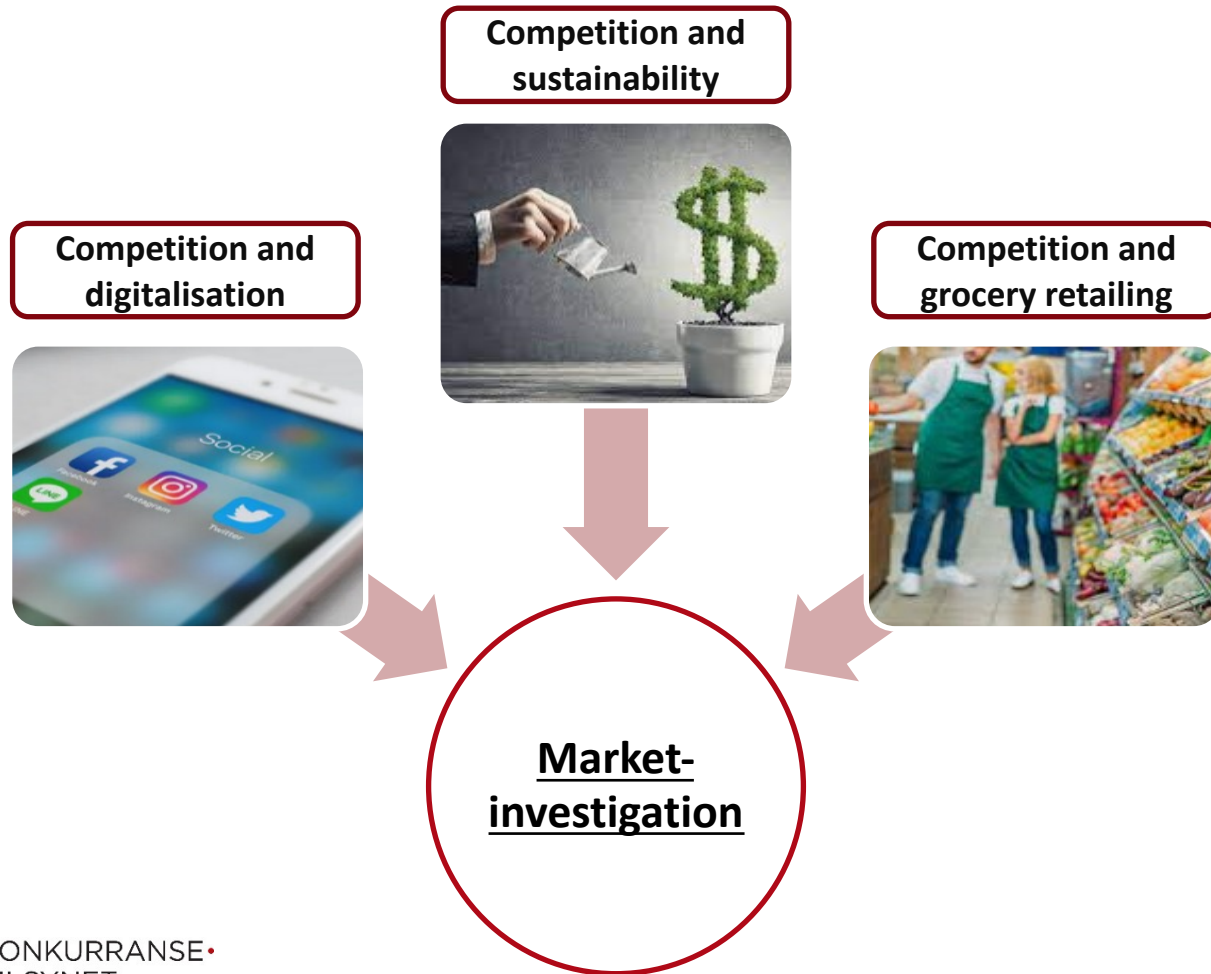
- *“We see a strong scope for a New Competition Tool with a broad scope within and across sectors.”*



Market investigation in the UK

*"The estimated average annual CMA consumer savings for 2017-2020 by area of CMA work were the following: competition enforcement (£45,2 million), consumer protection enforcement (£70,0 million), merger control (£386,8 million) and **market studies and market investigations (£839,5 million)**. See CMA (2020), "CMA impact assessment 2019/20»*

Market investigation in Norway (I)



Market investigation in Norway (II)

	Measures	Solved through MI
1	Follow up on Stortingets decision 572 on unfair price discrimination	✓
2	Lower the threshold for when firms in the grocery market are considered dominant	✓
3	Explore additional pro-competitive measures and assess different approaches for regulating price discrimination	✓
4	Explore the need for additional rules on labelling of private labels	✗
5	Assess the effects of private labels and vertical integration on competition, extend duty to report to the NCA, duty to explain increases in mark-ups and legal basis for monitoring use of private labels	[✓]
6	Plan for follow-up on Stortingets decision 577 and 578 on vertical integration and private labels	[✓]
7	Assess the need for regulation on exclusive land agreements which prevents entry	✓
8	Explore measures in order to secure competition and transparency at wholesale-level, including surveillance of price-setting of distribution	[✓]
9	Construct a precise definition of private label	✗
10	Launch public consultation on temporary regulation on price discrimination with § 14 as legal basis	✓

Market investigation in Norway (III)



er effektiv
nkkurransel

Section 14 of the Competition Act

- "Utvalget viser til at ikke alle former for konkurransebegrensende adferd i strid med lovens formål rammes av konkurranselovens § 10 eller § 11"



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Algorithms

Rent Going Up? One Company's Algorithm Could Be Why.

by Heather Vogell, ProPublica, with data
analysis by Haru Coryne, ProPublica, and Ryan
Little

- **Texas-based RealPage's YieldStar software helps landlords set prices for apartments across the U.S. With rents soaring, critics are concerned that the company's proprietary algorithm is hurting competition.**

Section 14 of the Competition Act (I)

If necessary to promote competition in the markets, the King may by regulation intervene against ***terms of business, agreements or conduct*** that restrict or are liable to restrict competition contrary to the purpose of the Act

The Competition Authority may take measures against ***circumstances or conduct*** which prevents, limits or affects competition to the detriment of the public interest

Section 14 of the Competition Act (II)

Market investigation vs Section 14

Static vs. flexible?

General vs. targeted remedies?

Directed at all firms vs. limited to some (few) firms?

Fragmented vs. holistic approach?





«The New Competition Tool: Its institutional set up and procedural design»

- *"Given the potentially vast and intrusive powers the NCT would confer upon the Commission, strong procedural rights and checks will need to be in place. The parties will have the right i) to be heard, ii) to have access to file, iii) careful and impartial examination, iv) a reasoned decision v) judicial review."*



"An Economic evaluation of the ECs Proposed "New Competition Tool"

- *"The implementation of a New Competition Tool requires a careful design of its governance structure to safeguard appropriate checks and balances."*



Thank you!

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