

# BECCLE

BERGEN CENTER FOR COMPETITION LAW AND ECONOMICS

## NEWSLETTER SUMMER 2013

NUMBER 1, VOLUME 2

SEPTEMBER 2013

### News

BECCLE has moved into a new building. From August 15 our visiting address will be Jekteviksbakken 31, Bergen.



This means that we are now co-located with the Faculty of Law at University of Bergen (at the JUSS II building). This will further strengthen the cooperation with lawyers interested in competition law at University of Bergen.

BECCLE was heavily involved in a committee that April 30 submitted a [report](#) where they proposed a [new law for code of conduct in the grocery sector](#). Tommy S. Gabrielsen at University of Bergen (and leader of BECCLE), Tina Søreide, Faculty of Law at University of Bergen and Erling Hjelmeng (leader of the committee) at University of Oslo were among the members in the committee and affiliated with BECCLE.



*Professor Erling J. Hjelmeng presenting the law for code of conduct in the grocery sector April 30 in Ministry of Agriculture and Food*

In addition, BECCLE submitted a report on buyer power in the grocery sector (see below), which was input to the committee's work.

BECCLE is partner in a joint project between University of California Berkeley and three institutions in Norway (University of Bergen, Norwegian School of Economics and Norwegian Business School) which received funding from [Peder Sather Center](#). It will be organized two workshops at Berkeley in November, one on industrial organization and one on industrial organization in health care markets.

Professor [Thibaud Verge](#), CREST in Paris, and professor [Greg Shaffer](#), University of Rochester in the US, have both started on their part time position at BECCLE. These are part time position shared with Department of Economics at NHH (Verge) or Department of Economics at UoB (Shaffer). They are both experts on industrial organization and competition policy, with a particular focus on the economics of vertical restraints.

### Past seminars – Spring 2013

*Tuesday, January 29 at 14.15 -16:15*

Senior risk analyst Eirik N. Christensen, Sparebanken Vest: [From Basel to Bergen – How will future regulation of the banking sector influence competition?](#)

*Tuesday, February 26 at 14:15-16:00*

Bernard McCabe, Senior Member of the Australian Administrative Appeals Tribunal: Airline alliances and competition regulation at the other end of the world.

*Tuesday, March 19 at 1415-1600*

Halvard Haukeland Fredriksen, Stipendiat ved juridisk fakultet, UiB: [Konkurransetilsynets erstatningsansvar for ugyldige vedtak](#).

*Friday, April 12 at 14.15 -16:15*

Senior manager Steffen Sühnel, PwC, Berlin: [Applying the Private Investor Test in practice](#).

Phd candidate Malgorzata Agnieszka Cyndecka, Faculty of Law University of Bergen: [The Applicability and Application of the MEIP](#).

Tuesday April 23 at 14:15-15:30

Advisor [Hanne Gard Lund](#), Norwegian Competition Authority and post doc [Bjørn Olav Johansen](#): RPM in competition law – legal and economic perspectives.

Thursday April 25 at 12:30-13:45

Tommy Staahl Gabrielsen, BECCLE and UiB: [Resale price maintenance and up-front payments: achieving horizontal control under seller and buyer power](#). Joint seminar with Department of Economics, University of Bergen.

Thursday May 2 at 14:15-15:30

Professor Tommy Staahl Gabrielsen, University of Bergen and BECCLE: [Code of Conduct for the Norwegian Grocery Sector?](#)

Thursday May 30 at 11:00-12:15

Professor Erling Hjelmeng, University of Oslo and BECCLE: [Forslag til lov om god handelsskikk – samfunnsøkonomisk effektivitet inn i kontraktsretten](#).

Wednesday June 19 at 14:15-15:30

Helder Vasconcelos, ANACOM and University of Porto: [‘Structural remedies in merger control’](#)

## The CLEEN conference

May 13-14 BECCLE hosted the annual conference of [CLEEN](#) (Competition Law and Economics European Network), a network consisting of nine institutions.

This was the 7<sup>th</sup> annual meeting, and more than 50 people from the nine European institutions participated at the conference. The keynote speaker was professor Carl Shapiro from University of Berkeley, and he talked about merger control. There were in addition two plenary sessions, one by professor Giorgio Monti and one by professor Erling J. Hjelmeng, and 20 presentations in parallel sessions. Most of the presenters were doctoral students or post doc fellows, and it was a mixture of lawyers and economists both as presenters and as discussants.



Director General *Christine B. Meyer*, professor *Carl Shapiro* and BECCLE director *Tommy S. Gabrielsen*

The program you can find [here](#). Next year the CLEEN conference will be held at University of East Anglia in Norwich.

## Doctoral dissertations

Three persons that have been affiliated with BECCLE had a public defense for their dissertation this spring.

**Harald Nygaard Bergh** had his [public defense](#) May 3. The topic of his thesis was pricing in media industries. Pricing in these industries is often complicated by customer groups being interconnected through network effects. For instance, a viewer's willingness to pay for watching a TV program is usually decreasing with advertisement volume, while an advertiser's willingness to pay for an ad increases with the size of the audience. Media firms must take these effects into account when they set prices. Against this backdrop, Bergh analyzes in four essays how media firms should respond to technological change. Bergh is now at Oslo Economics, among other things doing consultancy on antitrust cases.

**Halvard Haukeland Fredriksen** defended his thesis 'Offentligrettslig erstatningsansvar ved brudd på EØS-avtalen' May 31. The topic of the thesis is the principle of State liability for breach of EEA law. The legal basis of the principle is analyzed in chapter 2. Chapter 3 offers an overview over the conditions for the liability of the State. It is demonstrated that the EFTA Court has taken over the conditions from the case-law of the ECJ concerning State liability under EU law. In the following chapters the content of the principle and its consequences for the established rules on the liability of public authorities are presented. Fredriksen is now an Associate Professor at the faculty of Law, University of Bergen.

**Herdis Helle** defended her thesis 'Konkurransereglane i EU- og EØS-retten som skranke for nasjonale styresmakter' February 22. The thesis is providing a comprehensive overview of the obligations of Member States and EFTA-states under EU and EEA competition rules. Chapter 2 provides a detailed picture of the interplay between the competition rules and other parts of the EU/EEA law. In chapter 3 the important concept of undertaking is discussed. Chapter 4 provides an analysis of the so called state action doctrine and the related provision in article 106 (1) TFEU. Chapter 5 deals with the exception from the competition rules for services of general economic interest (SGEI) in article 106 (2) TFEU. Both the concept of SGEI and the scope of the exception are discussed. Helle is now an in-house lawyer for the local government in Bergen.

**Bjørn-Atle Reme** had his public defense June 6. The topic in his thesis was strategic interaction, with one paper on a laboratory experimental and two papers on industrial organization. The first paper on industrial organization discussed how the competition between two producers

offering different product qualities is affected by the consumers' lacking ability to correctly assess quality. The second paper on industrial organization is about the strategic interaction between buyers and sellers, such as for example food producers and retail chains. It shows how such factors as the sequence of negotiations and the interplay between the sellers' products – either competing products or complementary products – affects the outcome and distribution of profits in the industry. Reme has now a post doc position at Telenor.

## Master theses – some topics

**Rune Jakob Furset** provides an overview over the economic literature on resale price maintenance (RPM). The past and present antitrust policy on RPM both in the EU and the US is described, and the possible pro- and anticompetitive effects of RPM are discussed.

**Katrine Birkeland Larsen** explains how the welfare standard – either consumer or total welfare standard – in principle should affect the assessment of mergers. The merger between DnB and Gjensidige NOR is used as an example to illustrate the importance of the welfare standard.

**Stine Morken Kristoffersen** investigates the possible price effects of rate parity rules in the Norwegian hotel market. These rules imply that online agents and hotels must set identical prices to consumers.

**Therese Ugelvik Krosby** and **Vibeke Stusvik** discuss the proposal to have an internet portal for price comparisons in the Norwegian grocery market. They explain the characteristics of this market, and discuss whether such a price comparison site can have any anticompetitive effects.

**Tale Nergård Rønne** and **Ida Kristin Simonsen** use a survey outside book stores in Bergen to investigate the role of book stores as providers of information to consumers. This sheds light on the question whether vertical restraints, such as resale price maintenance, can be beneficial for consumers in this particular industry.

**Håvard Ormberg** discusses the content of the restriction by object analysis in article 101 TFEU. More precisely he is discussing the meaning of the ECJ's statement that one must see the agreement in its legal and economic context, when assessing whether an agreement restricts competition by its object. One of the main results is that also agreements that are not included in the classic object box can be regarded as object restrictions.

**Ingrid Halvorsen** has analyzed to what degree national governments can regulate competition through general regulations without violating the EEA-agreement. In the thesis Halvorsen demonstrates how the rules on free movement, the Unfair Commercial Practices Directive (dir. 2005/29) and the provision in ODA protocol 4 chapter II article 3 nr. 2 (regulation 1/2003 article 3 nr. 2 in EU) limits the national governments' freedom when they wish to regulate a national market.

## Some research topics

**Ronny Gjendemsjø, Erling J. Hjelmeng** and **Lars Sjørgard** discuss the need for a new approach concerning the abuse of a collective dominant position. While the concept of collective dominance has developed in line with a sound economic approach focusing on coordinated effects, no genuine concept of abuse in such situations has been established. Instead, the concept of abuse has been closely linked to the abuse concept in single dominance cases. They argue that there is a need to adapt the concept of abuse to the particular challenges posed by collective dominance and that Article 102 TFEU should primarily focus on conduct having as its object or effect the strengthening of the collective dominant position by reinforcing the oligopolistic interdependence and the tightening of the oligopoly. This could imply a more restrictive practice towards, for example, meet competition clauses. In this respect, Article 102 represents an as yet underdeveloped tool.

**Kurt R. Brekke, Tor Helge Holmås** and **Odd Rune Straume** study the impact of product margins on pharmacies' incentive to promote generics instead of brand-names. They show in a theoretical model that pharmacies can persuade patients with a brand-name prescription to purchase a generic version instead, and that pharmacies' substitution incentives are determined by relative margins and relative patient copayments. Second, we exploit a unique product level panel data set, which contains information on sales and prices at both producer and retail level. In the empirical analysis they find a strong relationship between the margins of brand-names and generics and their market shares. This relationship is stronger for pharmaceuticals under reference pricing rather than coinsurance. In terms of policy implications, their results suggest that pharmacy incentives are crucial for promoting generic sales.

**Tommy S. Gabrielsen** and **Bjørn Olav Johansen** analyze the effects of maximum resale price maintenance in the presence of effort on the retailer level (service). They study a setting where the opportunism or commitment problem identified by Hart and Tirole (1990) may arise. With unobservable contracts, an upstream monopolist may sell its product to two differentiated downstream retailers. Contract unobservability induces the manufacturer and each retailer to free-ride on margins earned by rival retailers, resulting in low transfer prices and low overall profit. O'Brien and Shaffer (1992) proposed a solution to this problem involving squeezing retail margins by using maximum RPM and high transfer prices. We show that when retail demand depends in any degree of retail sales effort, this equilibrium breaks down, and the opportunism problem reappears with full force. We show that no type of own-sale contracts will solve the problem if sales effort matters. Moreover we show that certain horizontal commitments, as for example industry-wide minimum RPM, may restore the fully integrated outcome, but only in special cases. This lends support to the present antitrust practice in the US as well as Europe, where maximum RPM is not a hard core violation of competition law.

**Ari Hyytinen, Frode Steen and Otto Toivanen** investigate cartel formation in Finland. They study cartel contracts using data on 18 contract clauses of 109 legal Finnish manufacturing cartels. One third of the clauses relate to raising profits; the others deal with instability through incentive compatibility, cartel organization, or external threats. They find that cartels use three main approaches to raise profits: Price, market allocation, and specialization. These appear to be substitutes. Choosing one has implications on how cartels deal with instability. They find that large cartels agree on prices, cartels in homogenous goods industries allocate markets, and small cartels avoid competition through specialization.

## **A policy report: [Buyer power in the grocery sector](#)**

BECCLE submitted in early April a report on buyer power in the grocery sector to the Ministry of Government Administration, Reform and Church Affairs. The report was an input to the work in the committee that had been asked to propose a new law on code of conduct in the grocery sector, which they did in late April

The economic literature on buyer power has developed quickly the last decade, and this report summarizes some main lessons from this literature and relates these results to the Norwegian grocery sector.

It is argued that the monopsony model, often referred to by lawyers in competition law cases, is ill suited to shed any light on buyer power in the Norwegian grocery sector. Therefore the report is mainly concerned about buyer power in bargaining situations between suppliers and retailers, the framework used in most of the recent economic literature. In contrast to a monopsony model, in such a framework buyer power is normally a good thing. It typically triggers competition between suppliers, and this might spill over to lower prices and better products for the final consumers.

However, buyer power may in some instances be detrimental to both consumers and the society in general. The report identifies several cases where this might in theory happen. Examples are the so-called waterbed effect, slotting allowances in some special situations, and detrimental effects on innovation (for example due to the hold up problem). Although the picture is complicated and there is lack of detailed data to evaluate the impact of buyer power, the main message is that there is no indication that buyer power in the Norwegian grocery sector has not been harmful to final consumers. It is pointed out, though, that underenforcement might be a problem. The reason is that each supplier, in fear of reactions from the retail chains in future negotiations, might not report any contract breaches.

In the report it is also discussed the development in profitability and productivity in the Norwegian grocery sector.

It is found that the retail chains in the grocery sector do not stand out as ones with higher profits than other sectors. This indicates that even if buyer power is present, they have not succeeded in extracting more profit for the owners on the retail level than in other sectors.

## **Publications**

### **Doctoral dissertations**

Bergh, H. N.: 'Four essays in media economics', Department of Economics, Norwegian School of Economics, 03.05.2013.

Fredriksen, H. H. 'Offentligrettslig erstatningsansvar ved brudd på EØS-avtalen', Faculty of Law, University of Bergen, 31.05.2013.

Helle, H.: «Konkurransereglane i EU- og EØS-retten som skranke for nasjonale styresmakter», Faculty of Law, University of Bergen, 22.02.2013.

Reme, B.-A.: 'Essays in Strategic Interaction', Department of Economics, Norwegian School of Economics, 06.06.2013.

### **Articles**

Brekke, Kurt R., Tor H. Holmås and Odd R. Straume: "[Margins and Market Shares: Pharmacy Incentives for Generic Substitution](#)", European Economic Review, Volume 61, 116–131, July 2013.

Foros Øystein and Frode Steen: "[Vertical Control and Price Cycles in Gasoline Retailing](#)", Scandinavian Journal of Economics, (forthcoming).

Gjendemsjø, Ronny, Erling J. Hjelmeng and Lars Sørøgard: "Abuse of collective dominance: The need for a new approach", World Competition, (forthcoming).

Hjelmeng, Erling and Lars Sørøgard: "Produktkobling i konkurranseretten" (Bundling in competition law), Europarättslig Tidsskrift, (forthcoming).

Mathiesen, Lars, Jostein Skaar and Lars Sørøgard: "[Electricity production in a hydro system with a reservoir constraint](#)", Scandinavian Journal of Economics, 115(2), 575-594, 2013.

### **Master theses**

Furset, R.J.: 'Ein gjennomgang av teorien om bindande videresalspriser', Department of Economics, University of Bergen, June 2013.

Larsen, K. B.: 'Norges fusjonskontroll', Norwegian School of Economics, June 2013.

Kristoffersen, S. M.: 'Konkurranseseffekt ved bruk av paritetsavtaler mellom plattformer – en empirisk undersøkelse

av priser ved hotell og nettagenter', Norwegian School of Economics, June 2013.

Krosby, T. U. and V. Stusvik: 'Dagligvareportal – til forbrukernes beste?', Norwegian School of Economics, June 2013.

Rønne, T. N. and I. K. Simonsen: 'Er bokhandlerleddet en viktig informasjonskanal for forbrukerne?', Norwegian School of Economics, June 2013.

## Working papers

Tommy S. Gabrielsen and Bjørn O. Johansen: "[Resale price maintenance and up-front payments: Achieving horizontal control under seller and buyer power](#)", Department of Economics working paper No. 2/13.

Jensen, Sissel, Ola Kvaløy, Trond E. Olsen and Lars Sjørgard: "[Crime and punishment: When tougher antitrust enforcement leads to higher overcharge](#)", mimeo, Norwegian School of Economics.

Brekke, Kurt R., Luigi Siciliano and Odd R. Straume: "[Hospital competition with soft budgets](#)", NIPE working paper 04/2012.

Brekke, Kurt R., Luigi Siciliano and Odd R. Straume: "[Can competition reduce quality](#)", NIPE working paper 05/2012.

Gabrielsen, Tommy S. and Bjørn O. Johansen: "[Buyer power and exclusion in vertically related markets](#)", Department of Economics working paper No. 01/12.

Jensen, Sissel and Lars Sjørgard: "[Enforcement with heterogeneous cartels](#)", SNF working paper 14/2012.

Johansen, Bjørn O.: "[The buyer power of multiproduct retailers: Competition with one-stop shopping](#)", Department of Economics working paper No. 03/12.

Johansen, Bjørn O.: "[Private labels, rent shifting and consumer welfare](#)", Department of Economics working paper No. 02/12.

Pal, Debashis, Kenneth Fjell and David E. M. Sappington: "[On the Merits of Endogenous Access Pricing](#)", mimeo, Norwegian School of Economics.

Steen, Frode and Lars Sjørgard: "[Disadvantageous Semicollusion: Price competition in the Norwegian Airline industry](#)", Discussion Paper 27/2012, Department of Economics, Norwegian School of Economics.

Hjelmeng, Erling: "[Bindende tilsagn i konkurransesaker – forordning 1 art. 9 og relevansen for konkurranseloven](#)", SNF arbeidsnotat 13/2011.

## Policy reports

Gabrielsen, Tommy S., Frode Steen, Lars Sjørgard og Steinar Vagstad: "[Kjøpermakt i dagligvaresektoren](#)". Rapporten er skrevet på oppdrag av Fornyings- administrasjons- og kirke departementet. Avlevert 12.4.2013.

Gabrielsen, Tommy S.: Lov om god handelsskikk. i I. Pettersen (red): "[Dagligvarehandel og mat 2013](#)", Norsk Institutt for Landbruksøkonomisk Forskning (NILF).

Sjørgard, Lars: "[Måling og prioriteringer i konkurransepolitikken](#)", Magma, 2013 (4), 60-71.

Vagstad, S.: Prisutvikling, lønnsomhet og produktivitet, i I. Pettersen (red): "[Dagligvarehandel og mat 2013](#)", Norsk Institutt for Landbruksøkonomisk Forskning (NILF).

## BECCLE

Bergen Center for Competition Law and Economics (BECCLE) was [established](#) in 2011, and it is a center jointly owned by Norwegian School of Economics and the University of Bergen. It is a meeting place for economists and lawyers interested in competition policy questions. The center is located in... address

In 2012 BECCLE joined a European network of research institutions with a similar focus: [CLEEN](#) (Competition Law and Economics European Network).

The general management of BECCLE consists of three academic persons. For the period 2011-2014 they are professor Tommy Staahl Gabrielsen from Department of Economics at University of Bergen (leader), associate professor Ronny Gjendemsjø from Faculty of Law at University of Bergen and professor Lars Sjørgard from Department of Economics at Norwegian School of Economics.



Lars Sjørgard, Ronny Gjendemsjø and Tommy S. Gabrielsen outside BECCLE at the JUSS II building (Jekteviksbakken 31)