

DIGITAL COMPETITION ENFORCEMENT IN THE NORDICS – CURRENT SCOPE AND FUTURE PROSPECTS

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Digital markets and platforms have increasingly attracted the attention of competition authorities around the world. The interest has also been evident in the Nordics. Competition authorities have allocated ample resources to stay on top of developments and during the last couple of years, there has been a large influx of reports and articles exploring competition policy in the digital age.

However, since many digital competition concerns are related to multinational players, and thus tackled at the EU level, Nordic authorities have on digital topics so far mainly investigated smaller firms or smaller markets.

In this note, we briefly discuss the state of digital competition enforcement in the Nordics – and reflect on what the future might hold.

Large interest in digital topics – also in the Nordics

The rise of digital technologies has introduced new questions about the future of EU competition law, which now lie at the centre of an antitrust debate both in Europe and in the rest of the world.

In Europe, the focus on digital markets has led the European Commission to propose the Digital Markets Act (DMA), which, among other things, seeks to address the negative consequences arising from platforms acting as digital ‘gatekeepers’¹ in the internal market. Another aim of the DMA is to set out common rules applicable across the whole EU.² This will help to avoid legal fragmentation, such as the fragmented outcomes observed in the Booking.com cases, where national competition authorities reached different conclusions.³

Nordic competition authorities have also been active in monitoring digital markets and describing potential competition problems related to these markets. In 2019,

¹ While there is no firm definition, the term commonly refers to platforms providing online services (e.g. online marketplaces) or controlling and influencing access to online services (e.g. operating systems, app stores and voice assistants) and thereby exercising control over entire ecosystems, with a strong impact on competition and innovation in the digital field, cf. [European Parliament](#).

² See for instance <https://op.europa.eu/en/publication-detail/-/publication/2a69fd2a-3e8a-11eb-b27b-01aa75ed71a1>.

³ See for instance an overview of the outcomes; <https://www.nor-tonrosefulbright.com/en/knowledge/publications/a3556d82/german-federal-supreme-court-narrow-best-price-clauses-applied-by-booking-dot-com>.

the Danish Competition and Consumer Authority (DCCA) even created a division specifically dedicated to strengthening the enforcement of competition rules against digital platforms. In recent years, the Nordic competition authorities have all published reports relating to competition in digital markets. Several of these reports have been on similar topics, such as digital platforms, e-commerce, and pricing algorithms, see Figure 1.

Digital competition cases in the Nordics have so far mainly concerned smaller players or smaller markets

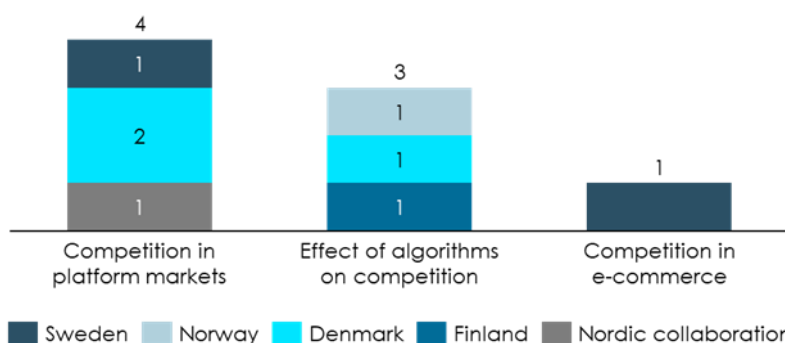
Despite the large interest in this space, many digital cases are multinational and take place in a European arena. As a result, the digital competition cases investigated by Nordic authorities have typically involved smaller firms or smaller markets.⁴

The DCCA, for instance, has issued decisions against Hilfr and Happy Helper: Two digital platforms that match providers of cleaning services with buyers. These cases concerned anti-competitive agreements, where Hilfr and Happy Helper implemented minimum hourly fees on their respective digital platforms.⁵ A similar decision concerned Ageras, a digital platform that connects its users to practitioners of professional services, such as accounting.⁶ The Danish Competition Council (DCC) found that the digital platform had been facilitating collusion by informing partners on the platform of “estimated market prices” and disseminating “minimum quotes”⁷, thereby inviting them to enter an illegal accord to raise prices. All three companies (Hilfr, Happy Helper and Ageras) are relatively small with turnovers of at most EUR 0.1 mill., EUR 1.3 mill. and EUR 3.4 mill. in 2018.⁸

Another Danish case concerning FK Distribution, a national distributor of printed and online ad catalogues,

Figure 1 Nordic competition authorities have published several reports on digital topics since 2019

Number of reports



Note: At a high level, the reports often conclude that the current competition law framework is capable of handling most anti-competitive behaviour in the digital economy, but that complementary tools and guidance could be needed considering the challenges that may arise with digital platforms.

Source: Copenhagen Economics

⁴ We have included the digital competition cases, which have come across during our research. Therefore, this note does not necessarily include a comprehensive overview of all cases that could be considered ‘digital’.

⁵ Hilfr also implemented a technical restriction on its platform, which limited the cleaning providers’ ability to set lower fees than the minimum fees set by Hilfr.

⁶ Ageras allows users of professional services such as accounting, bookkeeping and legal services to connect with accountants, bookkeepers, and lawyers.

⁷ The ‘minimum quotes’ corresponded to a minimum price for the individual customer, which was shown to the practitioners of professional services when they wanted to bid on a specific task.

⁸ Hilfr and Happy Helper had turnovers in the ranges of EUR [13,400-134,000] and EUR [134,000-1,340,000]. See Danish Competition Authority (2020), ‘Happy Helper’ (case 19/05554); Danish Competition Authority (2020), ‘Hilfr’ (case 19/05552); and Danish Competition Authority (2020), ‘Ageras’ (case 18/19827).

provides a slight exception to the rule since it concerns a larger company. In this case, the DCCA found that FK had allegedly abused its dominance by tying its sale of printed catalogue distribution to its service of viewing catalogues on its digital platform. The DCCA supported its analysis with arguments on the potential impact of network effects. However, while FK Distribution would not be considered a smaller company, the turnover stemming from its ‘digital service’ is likely still quite low.⁹

In Sweden, a relatively recent digital antitrust case is the interim decision against Bruce, a company in the market for fitness aggregator apps with a turnover of around EUR 3.8 mill. in 2019. Bruce was accused of foreclosing competitors by signing exclusive contracts with fitness studios. This theory of harm was flanked by arguments about strong network effects implying a risk that the market would tip in favour of a single company. The Swedish Authority motivated the decision by the fact that it can be necessary to act swiftly in fast-moving markets.¹⁰

Another recent case regarding exclusivity agreements of a digital platform is the Norwegian Competition Authority’s investigation of Foodora. Foodora is a food ordering platform with a turnover of around EUR 32 mill. in Norway in 2020.¹¹ The Norwegian authority investigated Foodora’s exclusivity agreements with restaurants selling food to consumers on their platform. Like the Swedish authority, the Norwegian authority also mentioned the rapid growth of some digital markets and network effects in its announcement. The investigation was closed in early 2022 after Foodora committed to stop imposing the exclusivity agreements.¹²

Two Nordic merger cases in digital markets are the Swedish merger between the mobile parking payment providers EasyPark and Inteleon, and the Norwegian merger between Schibsted and Nettbil in the market for online sales of used cars. In both cases, the target companies were relatively small, and the authorities

requested a notification despite the targets’ turnover falling below the national merger thresholds.¹³

Using the Swedish merger notification threshold to get an approximate indication of scale, we note that – aside from FK Distribution and Foodora – none of the companies in the abovementioned competition cases have a turnover exceeding this threshold, see Figure 2.

Concluding remarks

Digital markets are an increasingly important part of the economy, creating new opportunities for businesses and consumers, but also bringing new antitrust challenges. These markets should naturally be on the agenda of any competition authority.

While Nordic authorities have allocated ample resources to understanding digital topics, the largest digital competition cases concern European and global players – and should likely be tackled at the EU level to avoid legal fragmentation.

Digital cases in the Nordics have thus far mostly concerned smaller players or smaller markets – and there is not yet a settled picture regarding the number and scope of digital cases that should be driven at a national level.

We look forward to seeing what the future holds for digital competition enforcement in the Nordics and to contributing to the continued development of economic analysis for digital markets.

Please get in touch if you have any questions or comments – or if you would be interested in discussing these topics or cases with our experts.

⁹ The turnover from FK Distribution’s ‘digital service’ is not listed in the decision and we do not know the size of the overall market.

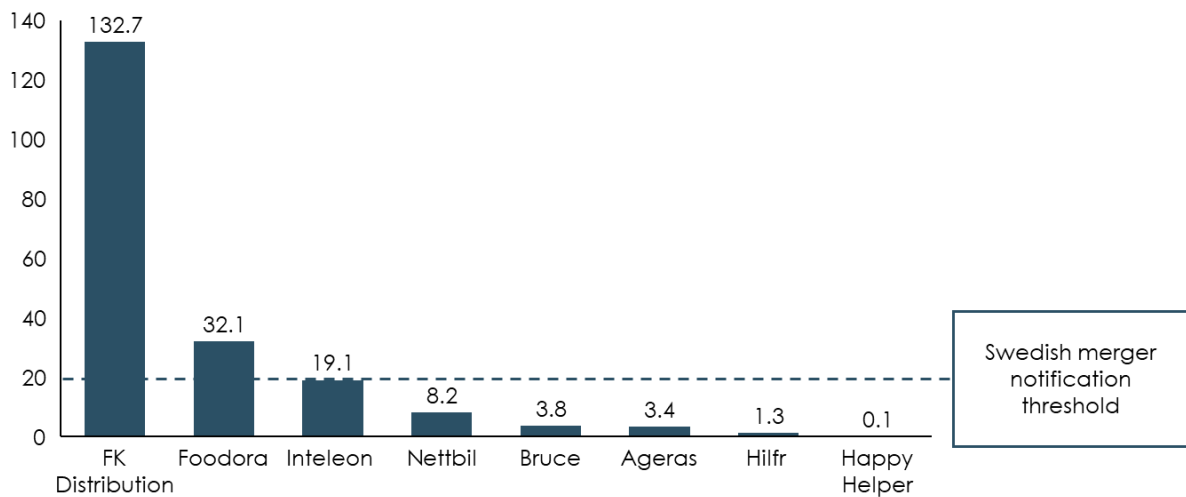
¹⁰ Swedish Competition Authority (2020), ‘Bruce’ (case 572/2019).

¹¹ DNB Business Directory, https://www.dnb.com/business-directory/company-profiles.foodora_norway_as.fdc3f6a05c6476cf73b18beed8bdfc33.html

¹² <https://konkurransetsynet.no/vedtak-mot-foodora-far-ikke-ha-eksklusivavtaler-med-restauranter/>

¹³ During 2021, the Finnish Competition and Consumer Agency (FCCA) has also asked to be granted the power to request merger notifications in cases where the notification thresholds are not met., cf. FCCA (2021), Selvitys yrityskauppa-valvonnän ilmoitusvelvollisuuden muutostarpeista.

Figure 2 Most cases investigated by Nordic competition authorities have involved smaller players
EUR Mill.



Note: The merger threshold displayed does not have direct relevance for abuse cases (competition authorities can and should also intervene in smaller cases) but is shown to provide an indication of the scale. We also note that the threshold differs between the Nordic countries. When precise turnover levels for the investigated companies have not been provided, we present the maximum possible turnover, based on the non-confidential information provided.

Source: Im with Bruce Annual Report 2019/2020; Swedish Competition Authority (2019), ‘Easypark/Inteleon’ (case 698/2019); Norwegian Competition Authority (2020), ‘Schibsted/Nettbil’ (case V2020-31); Danish Competition Authority (2020), ‘Ageras’ (case 18/19827); Danish Competition Authority (2020), ‘Happy Helper’ (case 19/05554), Danish Competition Authority (2020), ‘Hilfr’ (case 19/05552) and FK Distribution Annual Report 2018, p. 10 and [DNB Business Directory](#).

Feedback welcome

The views expressed reflect our own opinion on the significance of this topic for the digital markets and platforms and for regulatory economics practice. At CE, we advise European companies on a broad range of economic issues, including on potential competition concerns related to digital markets.

Disclaimer

Copenhagen Economics has acted as economic advisor to FK Distribution in the case described in this note.

About Copenhagen Economics

Copenhagen Economics is one of the leading economics firms in Europe. Founded in 2000, the firm currently employs more than 90 staff operating from our offices in Copenhagen, Stockholm, Helsinki, and Brussels. The Global Competition Review (GCR) lists Copenhagen Economics among the Top-20 economic consultancies in the world, and has done so since 2006.

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