

COPENHAGEN COMPETITION LAW LAB

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

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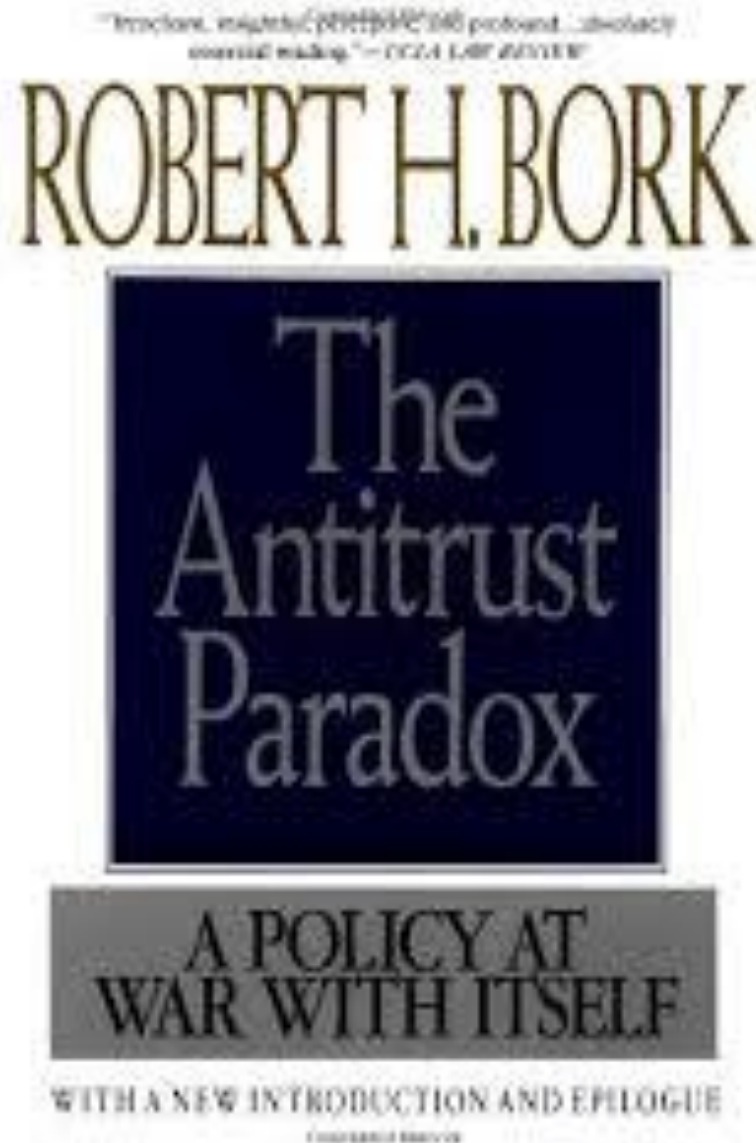
In 2005, DG COMP presented its *Discussion Paper* outlining how to align Article 102 with modern economic theory and thinking, leading to the *Enforcement Paper* in 2008

A core tenet of these is the As Efficient Competitor (AEC) test, offering a path for evaluating (alleged) priced-based abuse

The AEC test was a novelty (at least to me), but the AEC principle predates this. Its principle can be found in classic cases as AKZO (1986)

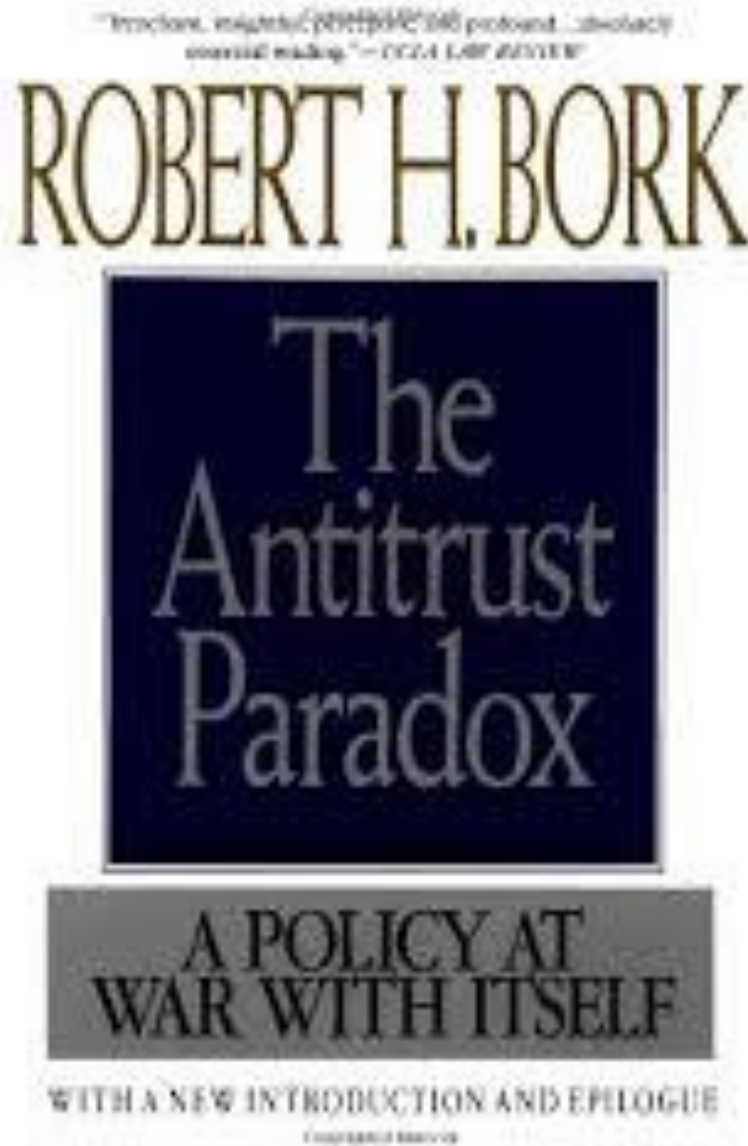
There are different theory's on why we got *Discussion Paper*, but it could be seen as a logical extension of the guidance provided on Article 101 and the Merger Regulation from 1999 onward

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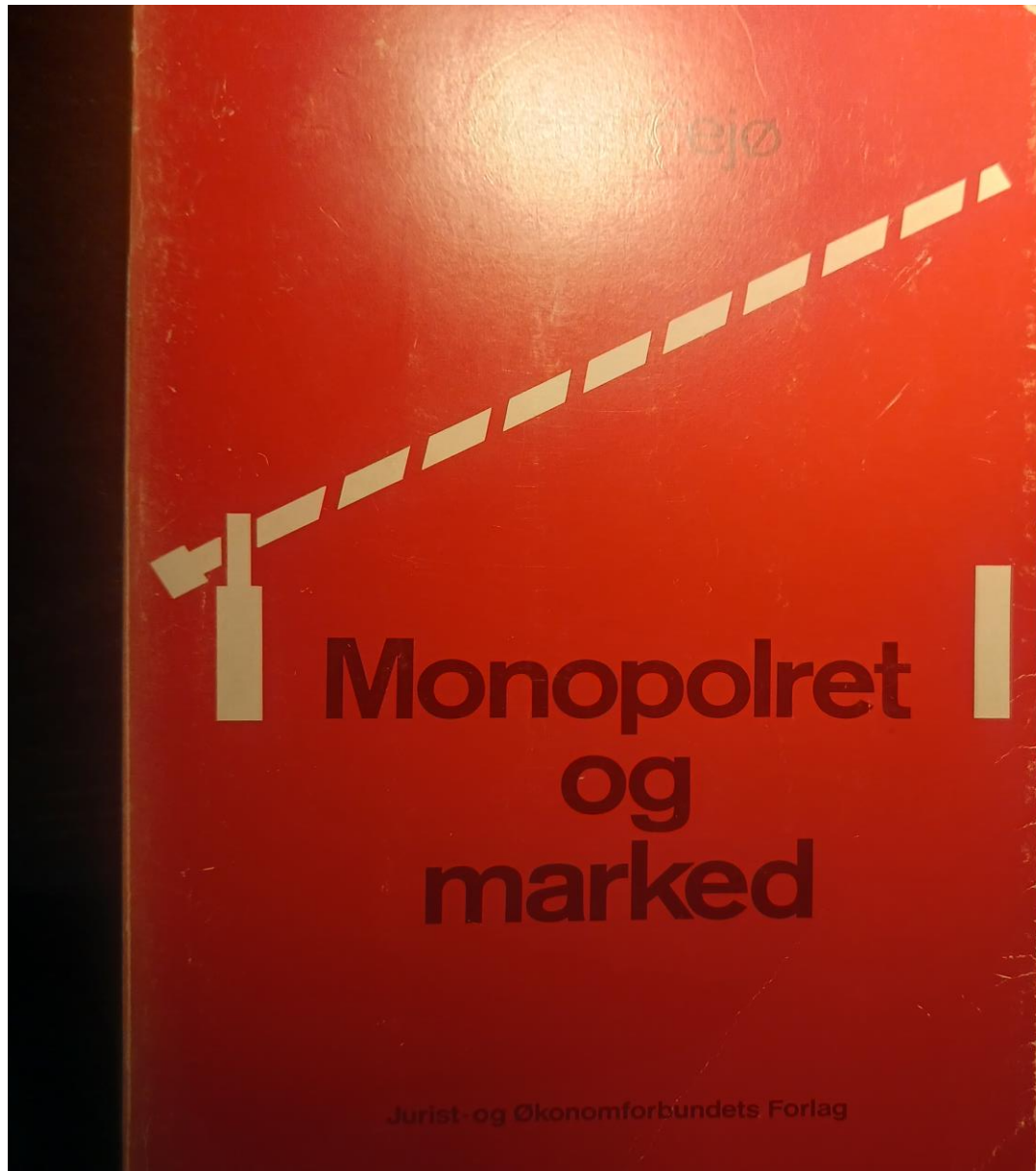


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2025 also markets the 40th anniversary of this epic book. An early European example of what we today would refer to the More Economic Approach

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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, their impact on enforcement, and what DG COMP would like to do henceforth

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

12-00 – 12.15	Welcome and introduction.	<u>Christian Bergqvist</u>, Associate Professor at Copenhagen University
12.15 – 13.00	<p>How did the economists end up in the driver's seat?</p> <p>How did we get to the Discussion Paper (2005) and the Enforcement Paper (2008)? Are the Draft Guidelines (2024) the revenge of the lawyers?</p>	<p><u>Svend Albæk</u>, Visiting Fellow, European University Institute, and Senior Consultant, Charles River Associates; former Deputy Chief Economist, DG Competition, European Commission</p>
13.00 – 13.45	<p>Putting the AEC test into work.</p> <p>How did the More Economic Approach and the AEC test change how we review rebates?</p>	<p><u>Rie Paving Mortensen</u>, Chief Economist, Partner at Plesner Law firm</p>
13.45 – 14.15	Break with coffee and cake.	
14.15 – 15.00	<p>Blame it on the economist – Did the AEC make a difference?</p> <p>Would cases such as Laurits Knudsen and Post Danmark I have ended differently without the More Economic Approach and the AEC test?</p>	<p><u>Peter Stig Jakobsen</u> partner and <u>Claus Bjørn Galbo-Jørgensen</u>, chief economist Bech Bruun Law firm</p>
15.00-15.45	<p>Full speed ahead.</p> <p>Why does DG COMP want to replace the More Economic Approach and the AEC test, and how would that affect self-assessment?</p>	<p><u>Lars Kjølbye</u>, partner Latham & Watkins LLP</p>
15.45 – 16.00	Questions and conclusion.	<p><u>Kathrine Søs Jacobsen Cesko</u>, Assistant Professor at Copenhagen Business School</p>

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- The speakers are assigned 45 minutes slots, including questions from the audience
- If you have question, please raise the hand and await the microphone
- We will survey the online chat, so those participating online can ask questions. We read it out
- At the end we will have all the speakers up here allowing for final questions

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13.00 – 13.45	Putting the AEC test into work	<u>Pia Ravng Mørtensen</u> , Chief Economist, Partner at Plesner Law



Svend Albæk, Visiting Fellow, European University Institute, and Senior Consultant, Charles River Associates. Former Deputy Chief Economist, DG Competition, European Commission and very much instrumental in drafting the Discussion Paper back in 2005. Svend Albæk will explain why we got this

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Rie Paving Mortensen is Chief Economist and Partner at Plesner Law Firm. She is originally an economist, but later pursued a law degree to get a better grasp of the legal aspects of antitrust. Today, however, she will apply her economic tool box to explain the AEC test for retroactive rebates

self-assessment?

Kathrine Søs Jacobsen Cesko, Assistant Professor at Copenhagen Business School



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<p>15.00 – 15.45</p>	<p>Full panel discussion</p> <p>Why does DG COMP want to replace the More Economic Approach and the AEC test, and how would that affect self-assessment?</p>	<p><u>Law Kjøll</u>, partner at <u>Steno & Wulff</u> LLP</p>
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14.15 – 15.00	Blame it on
15.00 – 15.45	Why does the AEC test
15.45 – 16.00	Questions

Peter Stig Jakobsen and Claus Bjørn Galbo-Jørgensen, are both with at Bech Bruun Law firm, and had front seats to how the *Discussion Paper* changed the approach to abuse. Peter Stig Jakobsen represented the plaintiff in *Post Danmark I* and *II*. Today they will outline what the *Discussion Paper* meant in practice.

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Lars Kjølby is partner Latham & Watkins LLP, and will outline the current review process of the *Enforcement Paper*, including what the EU Commission hope to achieve and why

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Lars Kjølby, partner Latham & Watkins LLP

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