Dear Konkurrensverket,

I hereby submit an application for funding of a Ph.D. project entitled: “Collaboration and relations between economic operators in the competition for public contracts - Legal and economic analyses of grey zones between public procurement law and competition law”.

For your information, the candidate has been approved by the relevant PhD school at Copenhagen Business School.

Best regards,

Grith

Grith Skovgaard Ølykke
Professor (mso), Ph.d.
Professor (wss), Ph.D.
Juridisk Institut, CBS
Solbjerg Plads 3, C5
2000 Frederiksberg
Denmark
Ansökan om forskningsmedel

Observera att bilagor endast ska skickas elektroniskt till konkurrensverket@kkv.se

1 Sökande (huvudansvarig för projektet)

Namn
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2 Anslagsförvaltare

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Postgiro

3Projektbeskrivning

Projekttitle: For att radera texten, använd Alt + Enter

Collaboration and relations between economic operators in the competition for public contracts -- Legal and economic analyses of grey zones between public procurement law and competition law

Projektet avses starta/startade, datum
2018-01-01

Projektet beräknas vara slutfört, datum
2020-12-31

Sammanfattnings av projektets syfte, betydelse och genomförande (högst 1400 tecken).
For att radera texten, använd Alt + Enter

The application is for funding of a Ph.D. project on the different types of collaboration and relations between economic operators which are perceived as perfectly legitimate from a public procurement law perspective but which may be problematic under competition law. National practice from e.g. Sweden, Norway and Denmark and practice from the EFTA court has led to heated debate on when consortia are allowed in public procurement context. However, the project broadens the problem area to also concern other similar substitutable types of collaboration and relation between tenderers. The project is interdisciplinary and the economic perspective provides a backbone to the analysis by aiding in explaining different types of tendering behaviour and by contributing with a relevant approach to distinguishing between desirable and undesirable behaviour by tenderers. The project aims at creating clarity concerning the current state of law and at making legal policy proposals as to how collaboration and relations between tenderers should be assessed and/or regulated. Ph.D. Candidate is MSc in Business Administration and Commercial Law Marianne Røder Lauridsen. Supervisors are Professor (war) Grith Skovgaard Ølykke on law and Professor Markus Asplund on economics.

Bifoga en utförligare projektbeskrivning (max 10 A4–sidor).

4 Kostnadsderoration
Fyll i de ofärgade cellerna med för projektet gällande information, så uppdateras de färgade automatiskt. Ge akt på de felmeddelanden i rött som visas vid överträdelse av Konkurrensverkets riktlinjer för anslag till forskningsprojekt.

### Projekttär 1

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| Summa övriga kostnader (hämtas från tabell 4a) | 15 000                                  |
| Total kostnad inklusive sociala-, och förvaltningsavgifter | 509 085                                 |

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| Total kostnad inklusive sociala-, och förvaltningsavgifter | 509 085                                 |
4a Redovisning övriga kostnader

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5 Kostnadssammanfattnings (anges i kronor) för nu sökt anslag

Total återstående projektikostnad

1 527 255

Därav söks från

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*Anslagsgivarens namn

Ansökan inlämnad, datum

Sökt belopp

**Anslagsgivarens namn

Ansökan beviljad, datum

Beviljat belopp

6 Övriga projekt som samtidigt kommer att ledas av huvudansvarig

Projekttitle: För att radbryta texten, använd Alt + Enter

Namn och institution på personer som beviljas forskningsbidrag kommer att publiceras på Konkurrensverkets webbplats.
Collaboration and relations between economic operators in the competition for public contracts
– Legal and economic analyses of grey zones between public procurement law and competition law

EU and implementing national public procurement regulation and case law explicitly allows a great variety of collaboration forms and relations between tenderers who take part in the competition for public contracts. The legitimacy and desirability of such collaboration and relations is however regulated by EU and national competition law. In spite of the practical relevance, there is only very sparse case law at EU level, and the state of law concerning assessment of collaboration and relations between tenderers in competition for public contracts is highly unclear, which may jeopardize efficient spending of taxpayers’ money. The Ph.D. project will analyse the application of competition law in a public procurement context in order to determine how to strike the balance between collaboration and relations between tenderers and effective competition for public contracts.

1. Introduction
The EU public procurement rules have the dual purpose of ensuring free movement of goods and services and ensuring undistorted competition for public contract.1 “Undistorted competition” is in the sense of public procurement law typically understood as ensuring that contracting authorities provide every economic operator equal opportunities in the competition; that is, prevention of protectionism, favouritism and corruption. However, it is important to recognize that undistorted competition between tenderers in the sense of ensuring adherence to competition law is equally pivotal to obtain welfare optimizing public spending.2

The procurement rules allow for economic operators to collaborate and to have relations in a variety of ways which may be substitutes for covert collusion or in other ways limits competition. First, an economic operator may rely on one or more other economic operators’ capacity in order to document that it is capable to fulfil the tendered contract. Second, economic operators may form a consortium for the purpose of tendering for and fulfilling a public contract. Third, economic operators may use subcontractors to fulfil a public contract. Fourth, the Court of Justice of the European Union (CJEU) has accepted that in principle economic operators which are organizationally related may compete against each other for public contracts. Allowing tenderers to collaborate and be related has the purpose of allowing the widest possible participation by tenderers – in particular SMEs – in the competition for public contracts, thereby increasing the competitive pressure.3 However, under economic theory it is generally acknowledged that the procurement setting displays features which may promote collusion, due to transparency, predictability of demand and repeated purchases.4 Allowing collaboration and relations between economic operators in all the mentioned

1 E.g. Stadt Halle, C-26/03, EU:C:2005:5, para 37; Commission v Austria, C-29/04, EU:C:2005:670, para 42; Varec, C-450/06, EU:C:2008:91, para 34; more recently see e.g. SAG ELV Slovensko, C-599/10, EU:C:2012:191, para 25 and Fastweb, C-19/13, EU:C:2014:2194, para 65.
3 C-538/07 Assitur, EU:C:2009:317, para 26; Serrantoni, C-376/08, EU:C:2009:808, para 40; C-425/14 Impresa Edilux and SICEF, EU:C:2015:721, para 36.
forms may in reality be legitimizing collusive behaviour that has the purpose of reducing competition for the public contracts. Collusion is prohibited by and sanctioned under EU competition law, but desirable collaboration may be subject to exemption. Thus, the collaboration and relations between tenderers which are recognized as in principle legitimate under public procurement law, and not subject to any official scrutiny under those rules, are in fact regulated, potentially prohibited and sanctioned by fines under competition law.

Due to the parallel enforcement systems for public procurement law and competition law, there is only very sparse case law on enforcement of competition law in a public procurement context at EU level which leaves the area well suited for academic research with the purpose of establishing the current state of law as well as developing paradigms for how the state of law should be to prevent economic operators’ distortion of competition for public contracts and obtain economic efficiency.

2. Purpose and problem statement
The purpose of this interdisciplinary Ph.D. project is: 1) to analyse the current state of law on collaboration and relations between economic operators in the competition for public contracts; and, 2) to apply economic theory to the specific public procurement context in order to explain the different forms of collaboration and relations between tenderers and examine the effects of the current state of law on incentives of economic operators to effectively compete for public contracts to the benefit of society. The economic theory underlying procurements and auctions is well-developed. The focus in the literature has been to examine how various procurement and auction formats perform in terms of efficiency and performance (expected buying price in procurement and expected revenue in auctions) under different assumptions regarding the distribution of participants’ valuations. There is also a great deal of work relating to how susceptible the outcomes of different formats are to collusion and entry costs, as well as the details of the auction and procurement designs, and more recently there has been a flurry of empirical examinations that have tested the theoretical predictions. It is not the purpose of the Ph.D. project to add to the extant theoretical literature on procurements and auctions. Instead, economic theory will help bring out the main trade-offs involved in public procurement to highlight the judicial issues. In particular, economic theory will be used to understand the consequences of allowing independent firms to collaborate/be related and thus coordinate their actions.

Based on the problems outlined in the previous section and the purpose of the project, the research questions


The economic theories for mergers, collusion, and coalition formation are all closely related to the aspects of procurements which are the main topic for the proposed PhD thesis, as illustrated below.
are as follows below. They are divided on legal, economic and interdisciplinary questions, but the structure of the analyses may be more integrated than that, if appropriate.

1) When are collaboration in the forms mentioned (reliance on capacity, consortia, use of subcontractors) and relations between tenderers legal under procurement law and competition law?

2) When do economic operators have incentives to collaborate or to compete in the competition for public contracts?

3) How should the different forms of collaboration and relations between tenderers be regulated/assessed?

A main assumption behind the research question is that there should be coherence between public procurement law and competition law. At a first glance, such coherence is not currently present. First, there is no systematic enforcement of competition law in a public procurement context with regard to collaboration between economic operators. Second, the CJEU acknowledges that agreements between undertakings in a concern may be problematic in a public procurement context, whereas such agreements are not covered by competition law; see further below in section 3.4. If it turns out that the states of law are not coherent, it will be examined whether there is an economic rationale that explains and legitimises the difference.

3. Background and state of the art
Collaboration between economic operators in the competition for public contracts has always been allowed in certain forms, such as collaboration in consortia. Over time, there has been a “push” from economic operators to clarify the possibilities of, and perhaps widen the scope for, collaboration and relations between tenderers (see further below). This agenda may be considered to be successfully realized through case law of the CJEU, which has widened the boundaries for collaboration and relations between economic operators in various ways, compared to the explicit provisions in the public procurement directives over time. Some of this case law has subsequently been codified.

3.1. Reliance on other economic operators’ capacity
The possibility to rely on other entities’ capacity was provided for by the CJEU in its case law, this case law was codified in the 2004 Public Procurement Directive. In the 2014 Public Procurement Directive, reliance on other economic operator’s economic, financial and technical capacity is explicitly allowed; the provision elaborates on this right compared to the first version of the provision in the 2004 Public Procurement Directive, and it codifies more recent case law of the CJEU. This right to rely on other economic operators’ capacity seems to generate a substantial number of preliminary references from national

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11 Article 47(2) of Directive 2004/18/EC of 31 March 2004 on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ 2004 L 134/144, which codified the then existing case law.
13 Article 63.
courts;\textsuperscript{15} however, none of them have so far touched upon a competition law assessment of economic operators’ reliance on the capacity of other entities. The possibility to rely on the capacity of other entities does not seem to have created any particular discussions in the literature.

3.2 Consortia

As already mentioned, consortia have explicitly been allowed since the very first public procurement directive; focus has been on facilitating collaboration between tenderer on performance of public contracts and on ensuring equal treatment between consortia and other tenderers. The 2014 Public Procurement Directive has detailed and elaborated the regulation of participation of consortia in public procurement procedures.\textsuperscript{16} EU case law on consortia has been sparse, but recently a few cases have been decided.\textsuperscript{17} The CJEU has relied solely on procurement law and not even mentioned competition law in its judgments on consortia.

One case on a consortium in a public procurement context has been decided under competition law by the EU Commission.\textsuperscript{18} However, in a number of Member States national courts and national competition authorities have decided cases and/or issued guidelines on the formation of consortia. In particular, competition law assessment of consortia seems to be a recurring issue in the Nordic countries.\textsuperscript{19} Moreover, in December 2016, the EFTA Court decided the Norwegian case E-03/16 - Ski Taxi SA, Follo Taxi SA og Ski Follo Taxidrift AS v Staten v/Konkurransetilsynet, and found that in principle a consortium constitutes a hard core restriction on competition as prices are agreed on, and that the assessment of the economic an legal context of such agreements only need to take into consideration what is strictly necessary to establish a distortion of competition by object. In particular it must be assessed whether the parties to the agreement are

\textsuperscript{15} Apart from the already mentioned judgments, see Siemens and ARGE Telekom, C-314/01, EU:C:2004:159; Strong Segurança, C-95/10, EU:C:2011:161; Hochhol LC Solutions, C-218/11, EU:C:2012:643; Pizzo, C-27/15, EU:C:2016:404; and Ostas celnickis, C-234/14, EU:C:2016:6. See also pending cases C-287/15, Lg Costruzioni, C-110/16, OJ 2016 C 175/10 and Caserta Costruzioni, C-223/16, OJ 2016 C 251/9.

\textsuperscript{16} Article 19(2) and (3); Article 63(1), last sentence, and 63(2) of the 2014 Public Procurement Directive.

\textsuperscript{17} Makredoniko Metro, C-57/01, EU:C:2003:47; Evropaliki Dynamiki v Commission, T-457/10, EU:T:2013:527; MT Højgaard and Zöblin, C-396/14, EU:C:2016:347. See also Serrantoni, C-376/08, EU:C:2009:808, which is discussed further below in section 3.4.


competitors and whether the joint bidding is an ancillary restraint to other non-distorting agreements. The notification of the case to the EFTA Court shows that the Norwegian Competition Authority explicitly points to the similarity and substitutability between consortia, joint ventures and subcontracting. This is the basic approach taken in this Ph.D. project as well. National developments point to the practical importance of the topic and signals the timeliness of the proposed research, in the light of the obligation to ensure the uniform application of EU law in all the Member States. There is some legal and economic literature on consortia, but the competition law assessment of such in a public procurement context has not been the subject of substantial writings.20

3.3 Subcontracting
The 2014 Public Procurement Directive contains an entirely new provision on subcontracting in Article 71; the provision partially codifies case law of the CJEU. According to Article 71, amongst other things, a contracting authority may require tenderers to state whether they will use subcontractors to fulfill the contract and if so, which subcontractors they will use.21 Article 63(2) which is also mentioned above, applies equally to situations where tenderers are using subcontractors;22 thus, in such cases the contracting authority may require the tenderer to perform specific tasks by itself. The use of subcontractors in public procurement settings has been subject to some EU case law;23 however, none of these cases have concerned competition law assessment of subcontractor arrangements.24 In December 2016, the Swedish Patent and Market Court held that the exchange of information regarding the lack of intent to submit a tender in the negotiation of a subcontractor agreement for the purpose of a tender constituted concerted practice contrary to Article 101 TFEU.25

3.4 Organisational and other relations between tenderers
As background it may be noted that the research questions on this topic are spurred by the case law of the CJEU. In Assitut, the national law required automatic exclusion of tenderers with organisational relations; the purpose of the national law was to prevent collusion. The CJEU acknowledged this purpose and effect of the national legislation but held that automatic exclusion of two tenderers from the same concern (mother and daughter) would not be proportional, as there was no possibility to rebut the assumption of collusion.26 The state of law was recently confirmed in Impresa Edilux and SICEF.27 In is noteworthy that under competition law, in principle agreements between undertakings in a concern are not prohibited under Article

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20 However, see A Sanchez-Graells, Public Procurement and the EU Competition Rules, 2nd ed, Hart 2015, 336-340, and the references provided.
21 This upholds the state of law, cf. Article 25 of the 2004 Public Procurement Directive.
22 Cf. opinion of AG concerning Hörmann Reisen, C-292/15, EU:C:2016:480, para 22. The case is currently pending.
23 E.g. Wall, C-91/08, EU:C:2010:182; Wrocław - Miasto na prawach powiatu, C-406/14, EU:C:2016:562;
24 However, see Evropakí Dynamíkí v Commission, T-9/10, EU:T:2013:88 where the applicant claimed that one participant in the tender had been subcontracting on two of the submitted tenders; this recollection of the facts was rejected by the GC, see para 60 ff.
101 TFEU, as such agreements are not perceived to be “agreements between undertakings”. Therefore, it seems like the CJEU takes a more strict approach under public procurement law. Under competition law, this implies that a mother company is responsible for actions of its daughters. As a reaction to mother companies’ liability for the actions of its daughters, a test for independence has developed; the state of law is that there is an assumption for the mother’s control of the daughter, but it is rebuttable. Thus, if the daughter is acting independently on the market, the mother is not liable for its actions which may influence the size of any pecuniary sanction as well as the liability to pay it. This case law could have inspired the CJEU to the approach adopted in Assitur. However no direct reference to or consideration of relevance of case law in the area of competition law was made by the CJEU.

The case law from the CJEU has been spurred by specific national legislation prohibiting organisationally or otherwise related tenderers from competing for the same public contract. However, in Member States where no such legislation exists, there are example of the simultaneous tendering for the same contract by organisationally related economic operators being contested, and coordinated bids being prohibited. Such cases are typically handled under procurement law, and competition law issues – such as whether the coordination of bids is a behaviour which may be sanctioned – are not addressed. The situation where tenderers in the same concern tender for the same contract has not been widely discussed in the literature, though it has been compared to multiple bidding by the same tenderers.

4. Perspective
The project takes an interdisciplinary approach. The main analytical part is the examination of the state of law; however, an important part of the project is to apply economic theory to explain the incentives and behaviour of economic operators in the public procurement setting.

The applied economic theory has the economic operator as the unit of analysis; thus, to ensure a common perspective for the project, the perspective in the legal analysis is on the legal framework within which the economic operator must act. This is appropriate, as the main part of the analysis will be competition law which regulates the behaviour of undertakings (economic operators in procurement terminology). The

31 However, see Ølykke 2011 (fn. 2), 187-189 and GS Ølykke and R Nielsen, EU’s udbudsregler – i dansk kontekst, DJOF 2015, 790-791.
32 A Sanchez-Graells, Public Procurement and the EU Competition Rules, 2nd ed, Hart 2015, 340-347. P Trepte, Regulating Procurement – Understanding the ends and Means of Public Procurement Regulation, Oxford University Press 2004, finds at p. 312 that “Participation in more than one bid raises the almost rebuttable presumption of collusion...”
perspective in the legal policy part of the project is on optimising societal welfare and achieving goals common to competition law and public procurement law.

5. The link between law and economics in the project
The basic economic analysis of the trade-off involved in whether or not to allow some tenderers to cooperate in public procurement is straightforward. The first effect is a limiting of competition from fewer tenderers that follows from allowing firms that might be able to submit bids individually to bid jointly as a consortium. This will tend to increase the prices paid by the buyer. The second effect is that if there are synergies from combining the resources of individual firms in the consortium then it will be able to tender more aggressively. This counteracting effect will tend to bring down the price.

As illustrated, all of the mentioned types of collaboration and relations between economic operators are allowed under the EU Public Procurement Directives; therefore, the legal analysis will mainly be concerned with the state of law under competition law considering any relevant impact of the public procurement context. The legal dogmatic method will be applied in order to establish the current state of law, under the acknowledgment that the legal positivistic philosophy may be the legal philosophy best fit to understand and establish valid EU law.\(^3\) The interpretative method favoured by the CJEU is teleological interpretation and as the state of law is rather unclear, identification of the relevant aims to be achieved will be necessary.\(^4\) This will entail discussions on the aims of the perhaps liberal approach to collaborations and relations between tenderers under public procurement law, i.e. allowing the widest possible participation of in tenders, and the aims of competition law, i.e. ensuring undistorted competition, biased towards favouring consumer welfare. It must be discussed how these aims can be aligned to allow for a basis for teleological interpretation that will ensure meaningful fulfilment of goals common to the two areas of law.

Article 101 TFEU prohibits any agreements between competitors which distorts competition, unless the agreements have such beneficial results that it should allowed according to Article 101(3) TFEU (contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, but does not impose indispensable restrictions and does not eliminate competition). From a competition law perspective, though many forms of collaboration are considered legitimate and efficiency enhancing, collaboration in all the mentioned forms between competitors will be potentially problematic. Thus, a main task is to establish when economic operators are in fact competitors\(^5\) and when the collaboration may nevertheless be efficiency enhancing to such a degree that the collaboration should be allowed. Focus will be on establishing the dividing lines between collaboration and collusion.

One seemingly obvious distinction between collaboration legitimised and allowed by procurement law and collusion which is prohibited by competition law is that the former is overt and undisguised; reliance on other economic operators’ capacity, consortia and subcontracting is open and visible collaboration – in this way the forms of collaboration allowed in public procurement law are very similar to joint ventures and

\(^3\) CD Tvarme and R Nielsen, Retskilder & Retsteorier, DJØF 2014, p. 524 ff.; see also e.g. U Neergaard and R Nielsen, “Where Did the Spirit and Its Friends Go? On the European Legal Method(s) and the Interpretational Style of the Court of Justice of the European Union” in U Neergaard, R Nielsen and LM Roseberry (eds) European Legal Method – Paradoxes and Revitalisation, DJØF 2011, 95.


\(^5\) Cf. also the judgment of the EFTA court referred to above in section 3.2.
mergers which are regulated by competition law. As demonstrated above, the state of law on collaboration and relations between tenderers is unclear, and therefore the state of law on joint ventures/mergers might be applied by analogy. Economic theory on mergers and joint ventures will be used to explain and legitimise or problematize the current state of law. The first point to note is that if joining individual firms were not able to participate in the procurement individually then allowing consortia to be formed would increase the number of tenderers and thus work to increase the competition. As a consequence the other tenderers would (in a first-price sealed-bid auction with independent private values) have to respond by tendering more aggressively. Thus the effect of increasing the number of bidders is reinforced by other non-consortia tenderers bidding more aggressively. A second point is that there might be an incentive for firms that are in fact able to bid independently might deliberately claim they are not and thus join a consortium. This would limit the competition at the procurement and might increase the buying price. However, this effect is mitigated by a strategic externality by which, in the absence of any synergies, it might be better to bid independently if the alternative is that other firms form a consortium. 36 This is connected to which criteria that should be applied if firms wish to form a consortium. Finally, if firms are allowed to form consortia it is a question of which consortia will emerge. It is likely that the answer to this will hinge delicately on the details of situation and firms’ cost structure and, this issue has seemingly not been addressed in the theoretical literature on procurement and auctions. 37

An initial part in the analysis of legal policy proposals is to determine the relevant norms for assessment of the current state of law and the proposals. Therefore, it will be discussed whether the consumer welfare norm in competition law also applies in public procurement law, cf. also the issue of common goals above. The results from the legal and economic analyses which reflect the expected behaviour of economic operators, given the state of law, will be assessed according to this standard and proposals made should increase societal welfare. The legal policy proposals may be inspired by national solutions adopted in various Member States. The legal policy questions could be answered either de lege ferenda (recommendations on how the rules should be) or de lege sententia (recommendations to the courts on how to interpret the existing rules).

6. Impact
The project is focussing on EU law but the results will have impact on national practice in the area of public procurement law and competition law as in these areas of law, public authorities and practitioners apply EU law directly or national law implements/derives from EU law. The Ph.D. project sets out to clarify the state of law, explain why economic operators collaborate or compete against related tenderers and to make recommendations on how such collaboration and relations should be perceived in practice. Thereby, the

36 The economic analysis mirrors that of the effects of exogenous horizontal mergers in oligopolistic markets. Under certain conditions (see e.g. SW Salant, S Switzer, and RJ Reynolds, “Losses from horizontal merger: the effects of an exogenous change in industry structure on Cournot-Nash equilibrium” 1983 The Quarterly Journal of Economics, 185), a merger would lead to higher prices and industry profits. However, since much of the increased profits are going to “outsiders” it might not be profitable for the “insiders” to pursue the merger, as it is better to be an outsider than an insider. This might be offset by synergies of the merging firms that give an incentive to lowering prices (see e.g. J Farrell and C Shapiro, “Horizontal mergers: an equilibrium analysis”, 1990 The American Economic Review, 107)
37 In the literatures on cartel formation (e.g. REF) and endogenous mergers (e.g. REF) the related problem of coalition formation is studied, where the main issue is whether there are any stable coalitions such that no firm inside the coalition would like to leave it an no outsider would be admitted.
project will contribute to the debate on the application of competition law to a public procurement context which is only in a modest beginning.

7. Project plan
The project is a three year PhD project carried out at Copenhagen Business School (CBS), under the Doctoral School of Business and Management. The candidate is Marianne Røder Lauridsen, who has an MSc in Business Administration and Commercial Law from CBS and who amongst others has worked with procurement law at the Danish Competition Authority – including work on the drafting of the Procurement Act implementing the 2014 Public Procurement Directive in Danish law. Currently she works with public procurement as a special consultant and team leader at the Agency for Modernisation under the Danish Ministry of Finance, and is doing an LLM in Public Procurement Law and Policy at University of Nottingham.

Main supervisor is Professor (wsr), Ph.D., Grith Skovgaard Ølykke, Department of Law at CBS. Grith is doing research on the interaction between public procurement law, competition law and State aid law. Co-supervisor is Professor Marcus Asplund, Department of Economics at CBS. Marcus is doing research on industrial economics.

During the three years, six months are allocated to PhD courses and six months to teaching. A three months stay at a University in another EU Member State is envisaged, probably in the second year of the project.

8. Additional legal and economic references

GL Albano, G Spagnolo and M Zanza, “Regulating Joint Bidding in Public Procurement”, 2009 5(2) Journal of Competition Law & Economics, 335


O Biran and F Forges, “Core-stable rings in auctions with independent private values”, 2011 73(1) Games and Economic Behavior, 52


S Davies and B Lyons, Mergers and Merger Remedies in the EU: Assessing the Consequences for Competition, Edward Elgar 2007

CE de Quesada, “Competition and transparency in public procurement markets”, 2014(5) Public Procurement Law Review, 229

A Estache and A Iimi, “Bidder asymmetry in infrastructure procurement: Are there any fringe bidders?” 2010 36(2) Review of Industrial Organization, 163


38 http://www.cbs.dk/forskning/phd/phd-skoler
I Kokkoris and H Shlezanski, EU merger control: A legal and economic analysis, Oxford University Press 2014
C Munro, “Competition Law and Public Procurement: Two Sides of the Same Coin?” 2006(6) Public Procurement Law Review, 352
L Parret, “Shouldn’t We Know What We are Protecting? Yes We Should! A Plea for a Solid and Comprehensive Debate About the Objectives of EU Competition Law and Policy”, 2010 6(2) European Competition Journal, 339
K Waehrer, “Asymmetric private values auctions with application to joint bidding and mergers”, 1999 17(3) International Journal of Industrial Organization, 437
**CURRENT AND PAST EMPLOYMENT**

<table>
<thead>
<tr>
<th>Date</th>
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<th>Organization</th>
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<tr>
<td>Jan 2017</td>
<td>current Professor (wfr) in Commercial Law and EU Market Law, Law Department of CBS</td>
<td></td>
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<tr>
<td>Feb 2014</td>
<td>Dec 2016 Associate Professor of EU-law and State aid, Department of Economics at CBS</td>
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<tr>
<td>May 2012</td>
<td>Feb 2014 Associate professor of EU-law and State aid, Law Department of CBS</td>
<td></td>
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<tr>
<td>Jun 2010</td>
<td>Apr 2012 Assistant professor, Law Department of CBS</td>
<td></td>
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<tr>
<td>Apr 2007</td>
<td>May 2010 Ph.D. student, Law Department of CBS</td>
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<tr>
<td>Nov 2005</td>
<td>Jun 2006 Legal consultancy services for Rovsing A/S</td>
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<tr>
<td>Oct 2002</td>
<td>Feb 2006 Student job at Department of Economics, CBS</td>
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**QUALIFICATIONS**

2010 Ph.D., Law Department of CBS, Abnormally low tenders — with an emphasis on public tenderers

2006 MSc in Business Administration and Commercial Law, CBS - Rating: Second highest cumulative grade point average of the graduating class.

2003 BSc in Business Administration and Commercial Law, CBS - Rating: Highest cumulative grade point average of the graduating class.

**RESEARCH AREAS**

Public procurement law; State aid law; competition law; regulation of public undertakings; European Union law

**ONGOING RESEARCH PROJECTS**

*Abnormally low tenders: pricing strategies and efficient assessment by contracting authorities and courts/ the complaints board.*

Research leader, main applicant for grant from Konurrencesverket (see ‘Other relevant qualifications’), expected output: co-authored article in peer reviewed international journal

*Effectiveness & application of EU/EEA law in national courts,* involved in research planning, national reporter, expected output: chapter in edited book, research leader: Christian Franklin, University of Bergen

*Tenders Electronic Daily,* interdisciplinary ongoing project, currently focus on public procurement procedures with low level of competition, expected output: co-authored article, co-researcher: Professor (wfr) Lisbeth la Cour, Department of Economics, CBS

**TEACHING AND COURSE RESPONSIBILITIES**

**HA (jur) - undergraduate**

- Competition Law (3rd term)
- Danish Public Procurement Law (5th term)
- Project 2 (on EU law and economics) (5th term)

**Cand. Merc (jur) - graduate**

- EU Public Procurement Law (elective)
- Regulation of Markets (elective)
- State Aid Law (elective)

**Supervision**

- Supervision of Assistant Professors
- Ph.D. supervision
- Supervision of Master Theses on the topics public procurement and State aid; on average supervising 5-10 theses per term.

**Guest teaching at other universities**

- Universidade Católica Portuguesa — Abnormally low tenders and EU public procurement law and State aid (Summerschool, September 2015)
- University of Bangor (Wales) – Interaction between public procurement, competition and State aid law (LLM, April 2013)
- University of Southern Denmark (SDU) – Public procurement law (master level, 2010); EU law (open university, bachelor level, 2010-2012)
- Copenhagen University Life (KU Life) – EU law (bachelor level, 2011-2012)
OTHER RELEVANT QUALIFICATIONS

2016
Appointed as expert member of the Danish Complaints Board for Public Procurement, 2016-2020; nominated by the Ministry of Science and Education

2015
Member of Konkurrensverket’s (the Swedish Competition Authority’s) research council, 2015-2019
Grant of 770,000 SEK by the Swedish Konkurrensverket for the project: ‘Abnormally low tenders: pricing strategies and efficient assessment by contracting authorities and courts/the complaints board’, 2015-2016
Appointed expert in working group established by the Swedish Government on Public Procurement Law and Collective Agreements
National expert in a study conducted by STARK legal network and Ecorys for DG Energy entitled, ‘Review of the effectiveness of the implementation of Article 6 of the Energy Efficiency Directive’
Reviewer at Public Procurement Law Review

2014
Member of the Board of the Danish State Aid Law Association
Member of the ad hoc expert group advising the Danish Competition and Consumer Agency on the transposition of the new public procurement directives.
Academic member of the Danish “Organisation and Market” committee of the Nordic Road Forum (Nordisk Vejforum), under the Danish Road Directorate of the Ministry of Transport.
Part of the organising team for the 2014 FIDE congress, Copenhagen, May 2014, 400 participants; responsible for topic three on public procurement.
Started own firm: State and Market Consult, 1-2 consultancy service jobs a year for Danish companies, primarily State aid law and competition law
Academic consultant employed by COWI on the project “Action on accidents at the workplace in public works contracts where migrant workers are employed”, funded by the Danish Working Environment Authority.

2013
Opponent on Ph.D. Thesis, R Mólden, ‘Information Exchange Related to Public Procurement or Otherwise Initiated by Public Authorities – An analysis of specific aspects under Swedish/EU competition and public procurement law’, University of Lund, planned for 15. October 2013 – the defence was cancelled.

2012
Co-organiser of the international conference Public Procurement Days 2012: Modernisation, growth, innovation, at CBS, Copenhagen, February 2012, 130 participants
Organiser of seminar with Lecturer Dr Pedro Telles from University of Bangor: Thresholds, bureaucracy and language: Failure or opportunity in EU regulation of public procurement, more than 50 registered participants

2011
Member of the Cand.Merc.(jur.) study board
Member of the Board of the Danish Association of European Union law
Reviewer at Common Market Law Review

2010
Referee at the International Constitutional Law Journal, published by the University of Vienna (www.internationalconstitutionallaw.net/online_journal), in the areas of European Union law and Nordic constitutional law
Member of the Cand.Merc.(aud.) study board, until ultimo 2012

2008
European University Summer School, Florence. Awarded diploma for performance at the written exam on Public Services in the EU.
Research-visit at University of Nottingham, with the Public Procurement Research Group (4 months)

2007
Awarded elite scholarship for travelling by the Ministry of Science, DKK 250,000.
Confirmed forthcoming presentations
Public Procurement Week 2017, London, 23 of March 2017, topic still to be decided

Procurement beyond price: Sustainability and corporate social responsibility in public purchasing, University of Copenhagen, 5 May 2017, Abnormally low tenders and their impacts for sustainable procurement

2016
European State Aid Law Institute Autumn Conference, 2 December 2016: State aid and public procurement
Norh-Con Annual Public Procurement Forum, 23 November 2016: Abnormally low tenders
Summer School at Universidade Católica Portuguesa, 7 September 2016: Transposition of the public procurement directives in Denmark
Law and Economics of Public Procurement, Rome 4-7 July 2016: Pros and cons of buyer power in public procurement with Senior Lecturer Albert Sánchez-Graells, University of Bristol
Public Procurement Week, University of Bangor, 2-10 June 2016: Chair of roundtable: Transposition of the public procurement directives in different Member States
Lunch talk, University of Copenhagen, 10 May 2016: Unormal lave tilbud - en sammenligning af rets tilstanden i Danmark og Sverige (Abnormally low tenders - a comparison of the state of law in Denmark and Sweden)
Dansk Forening for Udbudsrat (Danish Public Procurement Law Association), 27 January 2016: Udelukkelse (Exclusion), with Chief Consultant Morten Qvist Fog, Danish Industries

2015
Dansk Forening for Statsstøtterat (Danish State Aid Law Association), 7 May 2015: Statsstøtte begrebet: tilregnelighed og fordel
Summer School at Universidade Católica Portuguesa, 9 September 2015: Abnormally low tenders and Public procurement law and State aid law
International League of Competition Law (LIDC) annual Conference in Stockholm, 2 October 2015: part of an international panel, assigned topic: Abnormally low tenders
Nordic Academic Network for Competition Law, Copenhagen, 23 October 2015: Challenges in enforcement, the interplay between competition law, public procurement and state aid
Norh-Con, annual procurement conference, Copenhagen, 26 November 2015: A State aid perspective on certain elements of article 12 of the new directive on in-house provision with Ph.D.-student Cecilie Fanue Andersen

2014
Swedish Competition Law Workshop, Konkurrensverket, Stockholm, 26 November 2014: In-house and State aid, with Ph.D.-student Cecilie Fanue Andersen
Dansk Forening for Udbudsrat (Danish Public Procurement Law Association), 30 September 2014: Foreløbige resultater af forskningsprojekt om brug af profylaksebedømmelser i Danmark og andre EU-lande samt kommentarer til Fastweb-dømmen og dens betydning
International Public Procurement Conference (IPPC6), Dublin, 15 August 2014: Transparency notices in the EU public procurement regime: an empirical study of the use of transparency notices in Sweden and the United Kingdom, with Professor Lisbeth La Cour
Public Procurement Week 2014, Cardiff, arranged by University of Bangor, March 2014: The new directives - simplification, codification, constellation or complication?, panel participation, presentation on public tenders, inhouse and abnormally low tenders

2013
Sveriges forening for udbudsrat (Swedish Public Procurement Law Association), Göteborg, 12 December 2013: Bestemmelsen om normal lave tilbud - formål, definitioner og skon (The provision on abnormally low tenders - purpose, definitions and discretion)
Pharmaceutical Public-Private Partnering conference, 3. december 2013: Value and growth by pharmaceutical public-private partnering, with Professor Christina D. Tvarno, and Associate Professor Kim Østergaard
Global Revolution VI (conference on public procurement law), University of Nottingham, 25 June 2013: On actual and perceived monopolies
JUC public procurement conference arranged in cooperation with the Legal Advisor of the Danish State, 30 May 2013: Udfordringer ved oget fleksibielt: Betragtninger om statsstøtte (Challenges arising from increased flexibility: a State aid perspective).
Forsknings dags (National Science Day), 3 May 2013: OPS - når universiteter og medie

2012
Statsstøtte ERFA-gruppen, København, December 2012: What is an SGEI? with Professor Peter Møllgaard, Department of Economics, CBS
Private Enforcement of Competition Law, London School of Economics, September 2012: Report on Denmark
Modoeriserings av regelverket for offentlige anskaffelser hosted by Næringslivets Hovedorganisasjon and Direktøratet for forvaltning og IKT, Oslo, June 2012: Forholdet mellom offentlige anskaffelser og konkurranse (The relation between public procurement and competition law)
Public Procurement Days 2012: Modernisation, growth, innovation, at CBS, Copenhagen, February 2012: How should the relation between public procurement law and competition law be addressed in the new directive?

2011
European regulatory governance: processes and changes hosted by the Jean Monnet European Centre of Excellence at CBS, October 2011: The preliminary rulings procedure as a governance system with Associate Professor Andrej Savin.
Nordisk konkurranserettlig netværk, Bergen, January 2011: Public tenders and competition - problems and possible solutions

2010
Statsstøtte ERFA-gruppen, København, June 2010: Unormal lave tilbud og statsstøtte (Abnormally Low Tenders and State Aid)
Post.doc conference at the Max Planck Institute in Hamburg, May 2010: The concept of abnormally low tenders in EC public procurement law

2008
Research conference: the Lisbon Treaty - a step towards integrating welfare functions into EU law, September 2008: Legal perspectives on low pricebids by (previous) national monopoly providers participating in public procurement procedures - exemplified by public procurement of railway services in Denmark.

Grith Skovgaard Ølykke—1
LIST OF PUBLICATIONS—GRITH SKOVGAARD ØLYKKE
† marks peer reviewed publications.

Articles in peer reviewed journals

GS Ølykke, The Notice on the Notion of State Aid and Public Procurement Law, (2016) 4 European State Aid Law Quarterly, 508-526†

GS Ølykke, Commission Notice on the Notion of State Aid as Referred to in art. 107(1) TFEU: Is the Conduct of a Public Procurement Procedure Sufficient to Eliminate the Risk of Granting State Aid?, (2016) 25(5) Public Procurement Law Review, 197-212†


GS Ølykke, Is the granting of special and exclusive rights subject to the principles applicable to the award of concessions? Recent developments in case law and their implications for one of the last sanctuaries for protectionism, (2014) 23(1) Public Procurement Law Review, 1-20†

B Lundqvist and GS Ølykke, Post Danmark, now concluded by the Danish supreme court: clarification of the selective low pricing abuse and perhaps the embryo of a new test under article 102 TFEU?, (2013) 8 European Competition Law Review, 484-489†

GS Ølykke, Public undertakings and imputability – the case of DSB/First, (2013) 2 European State Aid Law Quarterly, 341-361†


GS Ølykke, The legal basis which will (probably) never be used – enforcement of State aid law in a public procurement context, (2011) 3 European State Aid Law Quarterly, 457-466†, reprinted with minor amendments in (2011) 3 European Private Public Partnership Law Review†

GS Ølykke, Kan en udbudsproces værje en objektiv begrundenelse for prisdiskrimering?, (Could a public procurement context be an objective ground legitimising price discrimination?), (2010) Ugeskrift for Rettsvæsen, U.2010B.168†

GS Ølykke, Regulation 1370/2007 on public passenger transport services, (2008) 17(3) Public Procurement Law Review, NA84-NA89†

Books

GS Ølykke and R Nielsen, EU’s udbudsregler – i dansk kontekst (EU Public Procurement Rules – in a Danish context), (2015) DJØF†

J Fejo and GS Ølykke, EU-konkurrencerettet – almindelig del (EU competition law), (2014) DJØF


Edited books

GS Ølykke and A Sanchez-Graells, Reformation or Deformation of the EU Public Procurement Rules, (2016) Edward Elgar

CD Tvarns, GS Ølykke, K Østergaard, Vækst og værdiskabelse via nye former for innovationsarbejder og partnerskaber (Growth and value-creation through new forms public-private innovation partnerships), (2013) Grafisk Rådgivning A/S

U Neergaard, C Jacqueson and GS Ølykke, Public procurement law: limitations, opportunities and paradoxes - proceeding of the XXVI FIDE congress in Copenhagen 2014, (2014) DJØF

J Fejo, U Neergaard, CD Tvarns and GS Ølykke, Liber amicorum et amicorum in honour of Ruth Nielsen, (2013) DJØF

GS Øykkø, Offentligretlige begreensninger for kontrakturnære: statstøtte-, udbuds- og konkurrencregler, (Public law limitations on the contractual space: State aid, public procurement and competition law), Chapter 5 in CD Tvarno, GS Øykkø and K Østergaard (eds.) Vækst og værdiskabelse via nye former for innovationssamarbejder og partnerskaber (Growth and value-creation through new forms public-private innovation partnerships), (2013) Grafisk Rådgivning A/S

J Fejø, U Neergaard, CD Tvanås and GS Øykkø, Introduction: Congratulations, in J Fejø, U Neergaard, CD Tvanås and GS Øykkø (eds), Liber amicorum et amicorum in honour of Ruth Nielsen (2013) DJØF

GS Øykkø and CD Tvarno, Pligten til EU-konform fortsættelse – efter EU-domstolens afgørelse i Dominguez-sagen (The duty to interpret national law in conformity with EU law – after the Dominguez-judgment), in J Fejø, U Neergaard, CD Tvanås and GS Øykkø (eds), Liber amicorum et amicorum in honour of Ruth Nielsen (2013) DJØF

GS Øykkø, State intervention in economic activities: State aid law quarterly, (2013) 3 European State Aid Law Quarterly


GS Øykkø, Report on Denmark, in Comparative private enforcement and collective redress in the EU, managed by B Rodgers, (2012), available at http://www.clcpecreu.co.uk/
CV

Personlige data

Navn: Marianne Røder Lauridsen
Fødselsår: 1976
Adresse: Vejlesøvej 94b, 2840 Holte
Telefon: 61100276
Mail: mroderlau@yahoo.dk

Erhvervserfaring

2014-
Speciaalkonsulent hos Moderniseringsstyrelsen
Ansat i kontoret "Statens indkøb, udbud, policy og jura".
Speciaalkonsulent med ansvar for kontorets udbud af statlige
rammeaftaler, juridisk ansvar for policy opgaver herunder opdatering af
cirkulærer mv.

2013-2014, dec.
Speciaalkonsulent hos Konkurrence- og Forbrugerstyrelsen
Ansat i Center for policy og loforberedende arbejde. Jurist med ansvar
for implementeringen af udbudsdirektivet (Udbudsloven).

2007-2013
Fuldmægtig hos Bygningsstyrelsen.
Ansat i styrelsens juridiske center. Jurist på byggesagerne Mærsk
Bygningen (Panum-tårnet) og Niels Bohr Science Park, samt mindre
byggesager på Københavns Universitet. Forestod udbud,
kontraktindgåelse samt entrepriseretlige spørgsmål.

2016-
Medlem af CBS Advisory Board, for CM,jur
2014-
Ansat som ekstern lektor på CBS. Underviser i faget udbudsret.
Specialevejleder på cand.merc.jur.
2012-2014
Ansat som undervisningsassistent i faget udbudsret på CBS.

Anden erfaring

1999-2004
Ansat i Folketinget. Studentermedhjælp for Gitte Seeberg, MF.

1996-1997
Ansat hos Erhvervs- og Selskabsbeskatningen.

Uddannelse

2015-
Master in Public Procurement Law and Policy (LLM) – Univeristy of
Nottingham

2012
Entrepriseret på Københavns Universitet

1999-2007
Cand.merc. jur. fra CBS
Speciale i Offentlige Private Partnerskaber, med fokus på udbudsretten og
kontraktsretten

1997-1998
Stud.polit på Københavns Universitet

1996
Student fra Holte Gymnasium
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</table>
Marcus Asplund  
Curriculum Vitae

Contact Information  
Department of Economics  
Copenhagen Business School  
Porcelaenshaven 16 A, 1  
DK-2000 Frederiksberg  
Denmark  

Email : mas.eco@cbs.dk  
Phone: +45 38153477

Birthdate  
May 10, 1966

Academic Positions  
Professor of Economics, Copenhagen Business School, 2012 – .  
Professor of Economics, Royal Institute of Technology, 2007 – 2012.  
Visiting Professor of Strategy, Stockholm School of Economics, 2006.  
Professor of Industrial Economics, Göteborg University, 2000 – 2001.  

Education  
Stockholm School of Economics, Ph.D., Economics, 1996. Thesis: Essays in  
Industrial Economics. Faculty opponent: John Sutton, London School of Economics.  

Professional Affiliation  
Research Fellow, Centre for Economic Policy Research (CEPR), 2009 – .
Publications

Marcus Asplund, Did the Swedish Tobacco Monopoly Set Monopoly Prices?, 2016, forthcoming *Economica*.


In progress


Marcus Asplund, Battista Severgnini, and Carl-Johan Dalgaard, Saints and Economic Growth.

Marcus Asplund and Davide Fortin, Cannabis Cannabilization.

Marcus Asplund, On the Size Distribution of Firms and Markets.

Marcus Asplund, Competition and Subsidies.
Courses Taught

Industrial Organization, PhD, Gothenburg University, 2000.
Managerial Economics, BA, Royal Institute of Technology, 2008 – 2011.
Microeconomics, PhD, Copenhagen Business School, 2014.
Microeconomics, MA/PhD, Gothenburg University, 2001.

Professional Activities

Research Fellow, Centre for Economic Policy Research (CEPR), 2009 – .
Economic Expert at the Swedish Court and Swedish Supreme Court in cases relating to intellectual property and markets, 2016 – .
Member of Appointments Committee (CWAC), Copenhagen Business School, 2015 – 2016.
Deputy Head of Department, Department of Economics, Copenhagen Business School, 2015 – 2016.
Member of Competition Advisory Board (suppleant), Konkurrence- og Forbrugerstyrelsen, Denmark, 2012 – 2015.
Member of Executive Committee, European Association for Researchers in Industrial Economics (EARIE), 2003 – 2014.
Local Organizing Committee (Chair), European Association for Researchers in Industrial Economics (EARIE) 38th Annual Conference, Stockholm, 2011.
Examiner of Ph.D thesis, University of Southern Denmark (Martin Nielsen, 2015)
Head of Division, Royal Institute of Technology, 2007 – 2009.
Member of Recruiting Committee, Royal Institute of Technology, 2008 – 2010.
Member of Postgraduate Study Board, Royal Institute of Technology, 2008 – 2010.

Reviewer


Awards

Best Teacher Award, Copenhagen Business School, MBA programme, 2013.
Best Teacher Award, Stockholm School of Economics MBA programme, 2008.
Winner of the European Association of Researchers in Industrial Economics Young Economist Essay Competition, 1996.
Award for outstanding performance in the doctoral programme at Stockholm School of Economics, 1995.

Research Grants

Competition on Unequal Terms, Swedish Competition Authority, 2007.
Empirical Studies of Competition in Concentrated Markets, Swedish Competition Authority, 1999
Supervision

Assisting advisor for Ph.D. students at London Business School and Royal Institute of Technology.

Seminars (recent)

Charles River Associates, Columbia, Cornell, University of East Anglia, Federal Trade Commission, Hitotsubashi University, INSEAD, London Business School,
London School of Economics, Mannheim, Michigan State, Northwestern, Stockholm University, RIETI Tokyo, Tokyo University, University College London, University of
Copenhagen, University of Southern Denmark, Warwick, WZB Berlin.

Conference participation

2016  Nordic Workshop in Industrial Organization, Reykjavik.
2014  Allied Social Sciences Annual, Philadelphia.
2012  CEPR Conference on Applied Industrial Organization, Cyprus.
2011  European Association of Researchers in Industrial Economics, Stockholm.
2010  European Association of Researchers in Industrial Economics, Istanbul.
2008  European Association of Researchers in Industrial Economics, Toulouse.
2005  Allied Social Sciences Annual, Philadelphia.
2001  European Association of Researchers in Industrial Economics, Dublin.
2001  Allied Social Sciences Annual, New Orleans.
2000  European Association of Researchers in Industrial Economics, Lausanne.
1999  European Association of Researchers in Industrial Economics, Turino.
1999  European Economic Association Meeting, Santiago de Compostella.
1999  Nordic Workshop in Industrial Organization, Bergen.
1999  The Economics of Market Structure, London.
1998  European Association of Researchers in Industrial Economics, Copenhagen.
1997  European Economic Association Meeting, Toulouse.
1996  European Association of Researchers in Industrial Economics, Vienna.
1996  European Economic Association Meeting, Istanbul.
1995  European Association of Researchers in Industrial Economics, Nice.
1994  European Association of Researchers in Industrial Economics, Crete.
1994  Nordic Workshop in Industrial Organization, Bergen.