In the EU member state Scandimark, there were four retail groups for sporting equipment: Intrasport, Sport2, XXXL Sports and SportMax. Each retail group owned and operated a large number of shops selling sporting equipment in cities and towns across Scandimark. On a national level, the four groups' retail market shares were as follows: Intrasport 45 %, Sport2 20 %, XXXL Sports 20 % and SportMax 15 %.

AC Hansen was a market research and consultancy company operating in Scandimark. One of its services was to collect process and report market information such as average prices, volumes and market shares for customers in various sectors of the Scandish economy. Such reports were typically provided to customers on a monthly basis based on historic and aggregated data for the previous month.

In January 2018 AC Hansen launched a new market intelligence web service to the four retail groups for sporting equipment. AC Hansen was given real time access to the cash register data from all the four retail groups' shops. AC Hansen's new computer technology instantly processed the incoming cash register data. By logging in to AC Hansen's web portal for market information for sporting equipment, each of the four retail groups could get accurate and instant information on current prices for individual sport products in all the sporting equipment shops in Scandimark. AC Hansen's own market information showed that the retail prices for sporting equipment had become more uniform after the launch of the new web service.

Question 1:

Discuss whether AC Hansen and/or the four retail groups for sporting equipment infringe Article 101 TFEU by applying the new market intelligence web service.

Intrasport also held a market share of 45 % in many national wholesale markets for the purchase of various types of sporting equipment from producers. The other three sporting groups' market shares in these purchasing markets also reflected their retail market shares.

In June 2018 Intrasport began renegotiating its purchasing contracts with manufacturers and importers of sporting equipment. Intrasport insisted that the new contracts included a so-called Most-Favoured-Customer clause (MFC clause) whereby the suppliers guaranteed that none of the other retail groups for sporting equipment in Scandimark would receive lower prices or better terms than Intrasport. The producers preferred not including MFC clauses in their contracts with Intrasport, but since Intrasport refused to continue a business relationship without such a clause, the producers unwillingly accepted the new contractual condition.

Question 2:

Discuss whether the Most-Favoured-Customer clauses infringe Article 102 TFEU.

The Scandish Competition Authority (SCA) took interest in the Scandish sporting goods markets, and launched an investigation against both the market intelligence web service as well as the MFC clauses. The investigation was conducted both under the EU Competition rules as well as the Scandish Competition Act, which conferred similar powers on the SCA as Regulation 1/2003.

The SCA was concerned that the market intelligence web service could reduce competition because it increased market transparency (Q 1 above) and that the MFC clauses could reduce price competition from the three smaller retail groups for sporting equipment (Q 2 above). The SCA therefore invited the undertakings to come forward with commitments to remedy its competitive concerns.

Question 3:

A) Advice the undertakings on potential commitments that would meet the SCA's concerns relating to the market intelligence web service and the Most-Favoured-Customer clauses.

B) From the perspective of the SCA: discuss whether the two cases are best solved by a commitment decision (Article 9 Reg 1) or a cease-and-desist order (Article 7).

In September 2018, Sport2, XXXL Sports and SportMax began discussing a possible merger between the three retail groups for sporting equipment. The three undertakings also had substantial turnover in other EU member states, and it was clear that a merger between would constitute a notifiable concentration with an EU dimension within the meaning of the EU Merger Regulation. The undertakings were however concerned that the European Commission would find that the concentration would significantly impede effective competition within the meaning of Article 2 of the EU Merger Regulation, either due to competitive harm in the form of unilateral or coordinated effects. The undertakings contacted a competition law lawyer to get advice on these issues, and asked the following question:

Question 4:

Explain the standard for appraisal of concentrations in Article 2 of the EU Merger Regulation and the difference between unilateral and coordinated anticompetitive effects.