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Press release

Monopolies Commission evaluates the competitive situation on the financial markets

- The Monopolies Commission considers competition on the financial markets to be effective only to a limited extent.
- The Monopolies Commission evaluates current regulation positively, but also sees a need to align regulation more with competition principles.
- The competition authorities' market supervision should be intensified.

The Monopolies Commission has presented its XXth Main Report under § 44(1) of the Act Against Restraints on Competition (ARC) today, which is entitled: **"A competitive order for the financial markets"**. In the Report, it assesses the present situation of competition on those markets from a German perspective.

The financial crisis demonstrated that – also in Germany – distortions of competition exist which have a systemic basis, since banks are able to avail themselves of an **implicit state guarantee** due to which they do not leave the market any more as other market participants would do (i.e., a guarantee for continued existence). This guarantee enables them to shift the risks of their business to society. That type of competition distortions is different from competition restraints that can be prosecuted by the competition authorities and that enable individual market participants to increase their chances of generating profit to the detriment of other market participants. The Monopolies Commission **generally takes a positive view of** the measures adopted to improve **financial regulation** after the financial crisis. Still, the Monopolies Commission **doubts** that the market participants will accumulate **sufficient capital buffers** such that the liability of the general public can be avoided effectively. In addition, **regulation must be developed further**, on the one hand, to reduce unbalanced regulatory burdens and, on the other hand, to close persisting regulatory gaps (shadow banking activities!)

To the Monopolies Commission, it has been a concern for a long time that **structural distortions of competition in the German market** be removed. The German banking sector is marked by a three-pillar structure. The Monopolies Commission considers the opacity of cooperation in the associated groups ("Verbundgruppen") to be particularly problematic. In its view, the regional principle in the savings bank acts gives rise to compelling legal concerns. The continued support of the public banks by the state is not unobjectionable either, at least considering the only vaguely defined public mandate of these banks. The Monopolies Commission finally advocates – irrespective of the prevailing trend – an increase of the options for private market participants to acquire an ownership interest in the member institutions of the savings bank group.

The investigations against large commercial banks and other companies for the **manipulation of reference rates** as well as developments in capital market trade militate, in the Monopolies Commission's view, in favour of stricter enforcement of the competition rules also on these markets. With regard to competition problems concerning **payment transactions** and consumer protection in banking, the Monopolies Commission favours a further improvement of cost transparency for the consumers.

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The Monopolies Commission chairman, Professor Daniel Zimmer, concludes: "In the banking system, important principles of the market economy and of competition have been put out of operation so far: When rescuing financial institutions, the states have ignored the bedrock principle that failed undertakings leave the market and that their owners and creditors must bear the loss. The recently enacted banking union is expected to overcome this situation in the European Union. Resolution is supposed to be made easier, the creditors are supposed to participate in the losses. However, the new regulations contain loopholes. Here, politicians and the prudential authorities are asked to take a clear stand: In the future, the message must be that creditor liability is enforced vigorously. In addition, there is need for a special merger control in the financial sector to prevent the establishment of new „too-big-to-fail" structures. Finally, a strict enforcement of the law vis-à-vis abusive practices is necessary in order to prevent manipulations, for instance, of reference rates in the future."

The Monopolies Commission intends to publish an English translation of this chapter later this year.

The Monopolies Commission is a permanent, independent expert committee, which advises the German government and legislature in the areas of competition policy making, competition law and regulation. Its legal responsibilities encompass, among others, the preparation of a Main Report analysing the development of competition on a bi-annual basis. The Monopolies Commission has five Members appointed by the Federal President based on a proposal of the German government. Prof. Dr. Daniel Zimmer of Bonn University is the chairman of the Monopolies Commission.