

Press release

Monopolies Commission presents Special Report on competition on German railway markets

- Monopolies Commission still sees deficits in competition in the railway sector
- Monopolies Commission demands stronger commitment of decision makers
- Monopolies Commission gives policy recommendations for improving competition on railway markets

The Monopolies Commission has presented its fifth Special Report on competition on the railway markets to both the Federal Government and Legislature. The Report bears the title: "Railway 2015: Competition policy off track?".

The Monopolies Commission argues that the legal framework has not been conducive to a successful development and that the political decision makers have not taken the necessary steps. "Policy makers have to be more active in advancing competition on the railway markets. A majority of the travelers would benefit from functioning competition", said the Chairman of the Monopolies Commission, Professor Daniel Zimmer. In its Report the Monopolies Commission fleshes out the necessary measures to create effective competition and to develop attractive offers in rail transport.

The pending regulation bill is not capable of vitalizing significantly the stagnant development of competition. The bill would transpose a European directive into national law without changes. This transposition would lead to legal uncertainty for all stakeholders and weaken both the existing regulation and competition.

The Monopolies Commission approves the incentive regulation and the *ex ante* authorization of rail infrastructure charging that the bill shall bring along. However, it considers it to be problematic that the incentive regulation will not take into account individual inefficiencies and will even create additional inefficiencies, e.g. by tying the increase of charges to the rate of increase of the federal regionalization funding. Moreover, the bill does not award the necessary powers of monitoring and disclosure to the Federal Network Agency.

The difficulties of private railway companies to buy and finance vehicles count among the main obstacles to competition in regional rail passenger transport. Responsible authorities have developed various ways to cope with this issue. These measures, however, do not address the real reasons of the problem. The dynamic has become self-reinforcing: The more the state remains involved in the procurement of vehicles, the less a private sector market will develop, and even more public involvement will appear necessary. The Monopolies Commission recommends that the responsible authorities reduce their involvement in the procurement of vehicles in order to break with this development.

The Monopolies Commission is convinced that the only way to establish undistorted competition in the German railway sector is to completely separate the infrastructure and transport units of the integrated company Deutsche Bahn AG. The Special Report reveals how an integrated company is structurally able to discriminate against competitors and why current regulation is not suited to prevent discriminating behaviour. The Monopolies Commission has considered the arguments for and against ownership unbundling. In order to reduce current inefficiencies, the Monopolies Commission recommends the organizational and financial unbundling.

The complete Special Report can be downloaded under www.monopolkommission.de.

The Monopolies Commission is an independent expert committee, which advises the German government and legislature in the areas of competition policy-making, competition law, and regulation. One of its statutory mandates is the drafting of a Special Report on the development of competition on the German railway markets. The Monopolies Commission consists of five members appointed by the Federal President upon a proposal by the Federal Government. The Chairman of the Monopolies Commission is Prof. Dr. Daniel Zimmer from the University of Bonn.

The Monopolies Commission's policy recommendations for more competition in the railway sector

The Monopolies Commission still sees deficits in the development of competition in the railway sector. There has not been any significant development in the past years. The Monopolies Commission still sees possibilities to implement effective and undistorted competition. For that purpose, the general framework has to be redesigned to reduce obstacles to competition and to strengthen the stagnating development. Political decision makers, however, do not provide the impetus needed to achieve a successful development of competition.

The pending railway regulation bill will provide little new momentum to competition in the railway sector.

- The transposition of the European directive without any changes weakens regulation and the development of competition.
- In order to avoid legal uncertainty and setbacks, the transposition of the European directive should take into consideration national law as well as the European provisions.
- The bill will introduce an incentive regulation and an *ex ante* authorization of rail infrastructure charging. It will merge the relevant provisions in the German General Railway Act and the Railway Infrastructure Usage Regulation, and it will strengthen the German Federal Network Agency. These improvements should be implemented and further developed to intensify competition.
- The incentive regulation should be introduced without any exceptions. The bill should not tie the increase of charges for infrastructure to the rate of increase of federal regionalization funding.
- The bill should be complemented by larger powers of monitoring and disclosure for the Federal Network Agency and by standards for regulatory financial reporting.
- The Federal Network Agency should be vested with the right to monitor the terms of use of rail infrastructure and service facilities. The minimum content of the terms of use for service facilities should be adjusted to the terms of use for the rail infrastructure.
- The regulation should be flexible and take into account essential facilities. An independent institution should evaluate deregulation potentials for service facilities based on a market inquiry.
- The Monopolies Commission should get a legal right of access to the files of the Federal Network Agency to be better able to fulfill its legal mandate.

The legal framework should be further improved by the following measures:

- The transport units of Deutsche Bahn AG should be privatised and be separated from the infrastructure units. As a first step, German legislator should introduce provisions which provide for the organizational separation of infrastructure and transport units.
- The obligations of transparency for infrastructure operators should be tightened. Access parties should receive detailed information on the allocation of rail stretches, their physical properties, and existing framework agreements.
- To give more certainty for the long-term planning for the allocation of stretches, the legal preconditions for framework agreements should be revised.
- Legislator should provide for a legal framework for the procedure used by the regional rail passenger transport companies to find a national sales scheme.
- Network charges for traction current should be calculated on the basis of consumption without considering peak loads.

Further changes should be introduced in the single segments of the railway market. In regional rail passenger transport, the competent authorities should do the following:

- Engage in competitive tendering even when it comes to successor contracts in order to contribute to public welfare;
- Establish simple tendering procedures with consistent and standardized requirements, which facilitate the participation of railway companies on competitive conditions;
- Reduce their involvement in the procurement of vehicles and use their resources to improve the development of the market and to safeguard competition on a longterm basis.

In long-distance rail passenger transport, the existing organization should not be replaced by a system of transport ordered by public authorities, considering that less factors of such a system would be controlled by competition.