

Press Release

Monopolies Commission demands better conditions for the expansion of modern broadband networks

- Public funding of the broadband expansion should only be provided in areas where expansion is not taking place through private enterprise. Funding programmes should be customised and supplemented by demand-side instruments.
- Incentives for the commercial expansion of high-performance broadband networks should be enhanced by abandoning a strictly cost-oriented regulation of new fibre-optic networks.
- When frequencies are allocated for the new fifth generation (5G) mobile communications standard the mobile network operators should be obligated to offer wholesale products on non-discriminatory terms.

The increasing digitalisation of the economy makes the swift expansion of gigabit-ready broadband infrastructures necessary. The greatest hurdle for more investment in modern broadband networks is the high costs of expanding them in combination with an as yet unpronounced demand for ultra-fast broadband connections. In addition, regulation in the telecommunications sector impacts the profitability of the investments and contributes to the restrained investing behaviour of the companies. In its Special Report released today, **“Telecommunications 2017: Bank on competition!”**, the Monopolies Commission makes suggestions for a successful execution of a speedy and comprehensive expansion of high-performance land lines and mobile networks.

“The greater part of the necessary investments in gigabit infrastructures is made by commercial telecommunications firms in competition without public funding. The right conditions have to be created for this type of investment”, states the Chair of the Monopolies Commission, Professor Achim Wambach. Deutsche Telekom, an operator with considerable market power, has until now been subject to a strict cost-oriented access and tariff regulation in broad areas of its operations. Whether and, if so, how newly built FTTB/H Networks will be regulated in future is currently being assessed by the Federal Network Agency (*Bundesnetzagentur*). The Monopolies Commission supports the plan of the regulatory agency to make the regulation of new networks more flexible and to tailor them to the special challenges of fibre-optic expansion. By departing from the strict cost-oriented regulation of access and tariffs, the profitability of risky investments can be improved and new incentives created for an expansion by private enterprise. Also, the potential inherent in **collaborations** in this expansion of broadband should be captured. If two or more firms share the costs of expanding the network, the risks of expansion decrease, because the prospective utilised capacity of the networks is optimised. If operators with strong market power participate in such co-investments, however, a (more flexible) regulation should not be cast aside. Other-

wise there would be a risk of these firms eluding regulation by forming strategic alliances, to the detriment of competition.

In the regions where commercial broadband expansion is currently not profitable, the expansion of gigabit networks should be subsidised with public funds. The funding should be designed so that no crowding-out or devaluation of private investment occurs. The proposal of financing the expansion of new networks with exclusive expansion rights in the form of **concessions** must be rejected. The consequence of this would be a monopolisation of the regional infrastructure and the exclusion of private investments.

The classic supply-oriented funding should be supplemented by demand-oriented instruments. Thus short-term vouchers for broadband connections, so-called **gigabit vouchers**, could help to generate the demand that is vital for a commercial expansion.

In the field of mobile communications, the expansion of mobile networks of the fifth generation (5G) should be promoted by the Federal Network Agency making suitable frequencies available quickly. The **allocation of frequencies** should be tied to the obligation of offering providers without their own mobile network wholesale products on non-discriminatory terms. This is the only way to ensure that besides the three network operators the service providers as well will be able to offer innovative 5G services. For maintaining competition in mobile technology this is of utmost importance.

It remains necessary to divest without delay the shares of the German state in the Deutsche Telekom AG, which amount to almost 32 per cent. Selling the state's holdings would put an end to its problematic double role as a regulator and shareholder.

The full text of the Special Report is now available for download at www.monopolkommission.de.

The Monopolies Commission is a permanent, independent expert committee that advises the federal government and the legislative bodies in the fields of competition policy, competition law and regulation. Among its statutory duties is the preparation of a Special Report analysing the development of competition on the telecommunications markets. The Monopolies Commission consists of five members, who are appointed by the Federal President after nomination by the government. The Chair of the Monopolies Commission is Professor Achim Wambach, Ph.D.

Recommendations of the Monopolies Commission

Phase out the (pre-)selection of carriers

The Deutsche Telekom as a company with market power on the wholesale call-origination market is obligated to provide carrier (pre-)selection. Because the effects on competition of the selection or pre-selection of carriers on the end-customer market for landline telephony are slight, the Federal Network Agency should:

- phase out the obligation of the Deutsche Telekom to provide for (pre-)selection of carriers;
- carry out an early review to ascertain the need for regulation of wholesale landline call-origination markets;
- release from regulation the end-customer market for access of private and business customers to the public telephone network at a fixed location.

Design net neutrality in a consumer-friendly manner

The Federal Network Agency is currently assessing the compatibility of so-called zero-rating tariffs in mobile communications networks with the provisions of the European Net Neutrality Regulation on traffic management. In the interest of consumers:

- The Federal Network Agency should closely examine possible effects of zero-rating tariffs on the development of contents and on consumers' freedom of choice;
- The federal government should work toward relaxing the provisions on admissibility of traffic management measures in the European Net Neutrality Regulation.

Allocation of mobile frequencies

A major precondition for the successful introduction of the next mobile telecommunications standard of the fifth generation (5G) is the availability of suitable frequencies. The Federal Network Agency intends to re-allocate the use rights for the frequencies becoming available in the 2-GHz and 3.6-GHz ranges. To promote competition on the mobile communications markets and to ensure as efficient a use of the frequencies as possible:

- The allocation of frequencies should be linked to the obligation to offer providers who do not have their own mobile network wholesale products on non-discriminatory terms;
- The due date for payments should be adjusted in accordance with the actual availability of the frequencies;
- The goal of comprehensive provision of all households with mobile broadband access should not be pursued solely through coverage requirements, but to a greater degree than before by state-funded expansion.
- When pursuing the goal of comprehensively providing all households with mobile broadband access an unnecessary duplication of infrastructures in areas difficult to develop should be avoided by either setting aside high coverage requirements in favour of state support, or limiting high coverage requirements to selected frequency blocks.

Expansion of broadband by private enterprise

When suitable basic conditions are set, sector-specific regulation comes to play a decisive role in firms' investment decisions. To facilitate private-enterprise expansion of high-performance broadband infrastructures, the following measures should be taken:

- The access and tariff regulation for FTTB/H access networks should be flexibilised independent of the chosen model of expansion;
- So-called wholesale-only business models should be encouraged by extending regulatory relief;
- For so-called co-investment models farther-reaching regulation relief for powerful providers on the market should not be pursued.

State funding for broadband

Where private investments fail to occur, public funds must be used to promote expansion, in order to guarantee a comprehensive, high-performance broadband provision. For an efficient funding of the broadband expansion:

- any increases of funds should be oriented on the actual need and the available resources for expansion projects;
- when calling for bids, the eligible regions should be divided into smaller parcels than previously;
- no exclusive, short-term rights of way, so-called concessions, should be granted;
- the supply-oriented funding should be supplemented by demand-oriented instruments such as short-term vouchers for gigabit connections.

Privatisation of Deutsche Telekom

More than 20 years after the conversion of the Deutsche Telekom into a joint-stock company the German state still holds a considerable share of stocks, at a total of 31.9 per cent, in the Deutsche Telekom AG, both directly and indirectly through the state-owned Kreditanstalt für Wiederaufbau. To resolve the resultant conflict of interests:

- the Federal Republic of Germany should divest its remaining shares in Deutsche Telekom.

Revision of the European legal framework for telecommunications

In the context of the current three-way negotiations for revising the European legal framework for electronic communication, the federal government should actively support:

- a revision of the definition of electronic communications services to take appropriate account of new internet-based communications services;
- ranking the newly added regulatory goal of connectivity no higher than the other goals of the regulation;
- avoiding an unnecessary spread of access regulation to suppliers without market power ("symmetrical regulation");
- national regulatory agencies retaining the right of final decision in regulatory measures (no introduction of a joint veto right for the Commission and BEREC;

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- not introducing an elaborate peer-review procedure in the course of the planned Europe-wide harmonisation of frequency administration;
- maintaining the current administrative structure of the Body of European Regulators for Electronic Communications (BEREC).