

Press Release

Monopolies Commission: Digital change requires legal adjustments regarding price algorithms, the media sector and the supply of medicines

Digitalisation is irreversibly advancing in many areas of the economy. Prices are increasingly set on the basis of algorithms. Streaming services and video portals such as Netflix and YouTube are gaining in popularity and are replacing traditional television more and more. In the supply of medicines, the mail order business increasingly supplements the services of brick and mortar pharmacies. The resulting structural change should be shaped for the benefit of consumers, with fair rules for traditional and new suppliers. In its **Biennial Report 2018**, the Monopolies Commission therefore recommends adapting the legal framework to the digital change. Today the Monopolies Commission presented its Report to the Federal Minister of Economic Affairs and Energy, Peter Altmaier.

The Monopolies Commission proposes in particular:

- to systematically investigate markets with **algorithm-based pricing** for adverse effects on competition. For this purpose, **sector inquiries should be used** more often, which allow identifying undesirable developments in competition,
- to further harmonise the regulatory framework for **audiovisual media services** and to restrict the **online services of public service broadcasters** to socially and culturally relevant content,
- to reform the **reimbursement system in the supply of medicines** and renounce a ban on mail-order sales of prescription medicines.

Many consumers shop to an increasing degree on the Internet, where pricing is more and more based on algorithms. Price algorithms can automate the coordination of prices and, thus, technically accelerate such coordination, e. g. if traders use the same algorithm or if the algorithms adapt prices automatically to other prices. The consequences are borne by the consumer, for example in the form of excessive prices. The Monopolies Commission recommends that markets with a tendency towards coordinated pricing should be systematically monitored. Competition sector inquiries are particularly suitable for this purpose because the companies are obliged to provide the Bundeskartellamt (Federal Cartel Office) with information. Additionally, consumer associations could be given a right to initiate competition sector inquiries, as they are most likely to receive information about potentially coordinated prices.

In audiovisual media, the distribution of content via the Internet is booming. This has led to an increase in media offerings, which has strengthened the diversity of opinions. Traditional television continues to dominate. However, especially among the younger users, the average daily consumption of online videos has increased significantly from 30 minutes in 2016 to 59 minutes in 2017. This is also reflected in the strong increase in sales of video streaming services. In view of the increasingly changing user behaviour, particularly of younger generations, and the increasing media convergence, the regulatory framework for traditional television and audiovisual online services, e.g. Netflix and YouTube, should be harmonised. In

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principle, audiovisual media services should be subject to uniform rules on the protection of minors and consumers, and on the regulation of advertising. In particular, the restrictions on advertising time for traditional television should therefore be removed. The liberalisation and flexibilisation envisaged at the European level is insufficient in this regard. In view of the numerous private-sector online offerings, publicly financed broadcasters should focus on so-called "public value"-content. "The online offerings of public broadcasters should primarily be content of particular social and cultural relevance, which is not sufficiently offered by private providers", said Achim Wambach, Chairman of the Monopolies Commission. Not all aspects of the recent agreement reached by the ministers-president of the *Länder* (*Ministerpräsidenten*) on the revision of the so-called public telemedia task (*Telemedienauftrag*) can therefore be assessed as positive. It is to be welcomed that broadcasters continue to concentrate on moving image content and will not be allowed to offer press-like online content in the future either. However, the planned expansion of online audiovisual services, for example through the provision of European films and series, could lead to the crowding out of private competitors.

With regard to the supply of medicines, the Monopolies Commission recommends a gradual adjustment of the remuneration system. For pharmacies, the price of services for prescription medicines should in the future consist of a fixed remuneration for advisory services to be negotiated between pharmacies and health insurers, and a fee for services to be determined by the pharmacy. Instead of the surcharges for patients, the service fee would be charged individually by the pharmacies. Such a service fee should be limited in amount and depend on services such as a particularly favourable location, short waiting times or supplements like a pharmacy magazine. In the context of this adjustment, pharmacies should, as a first step, be allowed to grant discounts on the surcharge which patients with statutory health insurance pay for prescription medicines. Particularly in metropolitan areas where many pharmacies compete this will benefit consumers, while structural improvements in the reimbursement system will also contribute to the supply in rural areas. The mail order business, which has been admissible in Germany since 2004, complements the supply in an appropriate manner. The discussed ban on mail order sales of prescription medicines would be neither helpful nor necessary to secure the supply in rural areas. It would hinder the reaping of benefits from the digitalisation of the health care system.

Furthermore, the Monopolies Commission establishes in its **concentration reporting** that the increase in concentration among companies and in price mark-ups, which was observed in the USA and is partly attributed by commentators to technological developments, does not exist in Germany, or at least not to the same extent.

The Monopolies Commission is a permanent, independent expert committee which advises the German federal government and legislature in the areas of competition policy making, competition law and regulation. Its legal responsibilities encompass, among others, the preparation of a Biennial Report analysing the development of competition. The Monopolies Commission has five Members appointed by the Federal President based on a proposal of the German government. Prof. Achim Wambach, Ph.D. is the chairman of the Monopolies Commission.