

Press Release

Monopolies Commission: Strengthening the competition regime in Europe in times of the Corona crisis, digital change and growing challenges from Chinese state capitalism

Germany has taken over the Presidency of the Council of the European Union at a time of great challenges for the competition regime in Europe. The Corona crisis poses a lasting threat to economic stability. As a result of recession and structural changes, concentration will increase in many markets. The push in digitalisation that is linked to the crisis will further strengthen the market power of the leading digital companies. China, which supports state and private companies within the framework of its economic policy and influences their activities, additionally constitutes an increasing burden for European companies in the internal market. Strengthening the competition regime in the crisis will be one of the major tasks for Germany's Presidency of the Council. What is needed is a counter-draft to industrial policy approaches that would permanently damage competition in the internal market and thus endanger a key element of the European economic order.

The Chairman of the Monopolies Commission, Prof. Achim Wambach, Ph.D. observes: "The European internal market is a story of success. Competition in the internal market should be strengthened by new instruments. The German Federal Government can contribute to this by advocating the regulation of platform during its Presidency of the Council. The abuse of market power by dominant platforms must be prevented. In addition, an instrument that is applicable to third country subsidies should be introduced. Its aim is to ensure fair competition between European and, notably, Chinese companies."

In its **Biennial Report "Competition 2020"**, the Monopolies Commission makes recommendations on how the competition regime in Germany and Europe can be strengthened. Today, the Monopolies Commission presented its report to the German Federal Minister for Economic Affairs and Energy, Peter Altmaier.

In particular, the Monopolies Commission proposes

- that in the **Corona crisis**, competition law should continue to apply with no compromises as to substantive law and that the potentially distortive rescue packages for companies implemented by the State should be accompanied by measures to promote competition,
- to effectively limit the **market power of the major digital platforms** by setting rules for dominant platforms at European level,
- to reduce distortions of competition in the internal market with an instrument in European competition law that is applicable to third country subsidies. The instrument is intended to ensure equal treatment of **subsidies granted by third countries such as China** and State aid by Member States.

The majority of State measures to support companies in the Corona crisis are subject to control by the European Commission due to their potentially distorting effect on competition. However, not all support measures that pass through State aid control are neutral towards competition. Financial aid to, e.g., Deutsche Bahn AG may harm competition in the transport sector if the aid does not also benefit competitors, for example by granting support for investments in the rail infrastructure. Equity participations by the State in companies such as Deutsche Lufthansa AG must be accompanied by pro-competitive conditions and requirements as well as a plan for the resale of the State shareholding. In times of crisis, flexible appli-

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cation of competition law may be appropriate for temporary cooperation between companies. This does, however, not apply to the rules on merger control. In contrast to a cooperation, which can be terminated comparatively easily following the crisis, positions of power once attained through mergers would remain permanent at the expense of competition and consumers.

The activities of large online platforms can cause a tipping of the market or the formation of ecosystems. Since the market structure can, as a consequence, become permanently entrenched, the Monopolies Commission supports the recommendation for a Platform Regulation to be adopted at European level. Such a Platform Regulation would contain certain rules of conduct for platform companies, i.e. a ban on self-preferencing as well as more stringent interoperability and portability obligations. The Regulation could also include remedies for abuses of market power that have lasting effects on the market structure and for breaches of the additional obligations for dominant platform companies laid down in the Platform Regulation. A further issue to be addressed is that although the competition authorities have extensive powers to collect information, they may encounter considerable difficulties when using their investigative powers in proceedings. The Monopolies Commission therefore recommends tightening the procedural obligations to cooperate in cases where the authorities have made all reasonable efforts to investigate.

In order to achieve its industrial policy goals, the Chinese state intervenes in economic affairs in many different ways, *inter alia*, by granting subsidies to state and private companies. Due to China's growing importance in the global economy, these market interventions are increasingly putting European companies at a disadvantage. Under the existing rules, the protection of the European market economy has gaps, in particular as regards subsidies from third countries. The Monopolies Commission endorses the introduction of an instrument that is applicable to third country subsidies and that would largely ensure equal treatment of third country and Member State subsidies. The instrument should enable the European Commission to intervene in order to siphon off advantages. Moreover, in cases of an acquisition of a company and of Member State procurement, a standstill obligation should apply to all parties concerned, i.e. the procedure should be suspended pending the examination of the third country aid. This would prevent the subsidy from flowing to the seller in cases of an acquisition or, in the case of Member State procurement, to the agent responsible for the tendering body which would then have to impose a possible countervailing duty on this indirect beneficiary.

The [Biennial Report](#) and a [podcast "CAST4COMPetition – Competition 2020"](#) are now available on the Monopolies Commission's homepage.

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.