

## Press Release

### **Monopolies Commission: The ecological-digital transformation will only succeed with a strong competition regime**

In its **Biennial Report "Competition 2022"**, the Monopolies Commission **makes recommendations on how an adaptation of the competition regime can contribute to the ecological-digital transformation.** Today, it presented its report to the Federal Minister for Economic Affairs and Climate Action, Dr. Robert Habeck.

The Chairman of the Monopolies Commission, Prof. Dr. Jürgen Kühling, LL.M.: "The competition regime in Germany is an important pillar for coping with the upcoming transformation processes. At the same time, it ensures that market power which arises in the course of digitalisation and increase in concentration in individual sectors is limited. The Monopolies Commission also takes a fundamentally positive view of the most recent considerations of the Ministry for Economic Affairs on a tightening of antitrust law. It already analysed the possibility of an abuse-independent unbundling in 2010 and presented recommendations for the requirements of such an instrument, but also pointed out its limits."

In particular, the Monopolies Commission proposes

- **to take into account in the examination under antitrust law sustainability goals** which are pursued by cooperations and mergers **provided that they result in benefits for consumers,**
- **to supplement** the regulation of the so-called gatekeepers in digital markets, as provided for in the **European Digital Markets Act, with national rules for facilitating actions for injunctions and for damages,**
- **to respond to the increasing company concentration in the regulated sectors and the rising mark-ups among large companies by strengthening the competitive forces** in the sectors concerned.

In many cases, there is **no conflict of objectives between protecting competition and sustainability. On the contrary, competition is the guarantor that companies produce technologies which are innovative and at the same time climate- and environmentally-friendly.** In cases where climate protection and other sustainability goals cannot be implemented by the companies of an industry themselves, agreements on the coordinated implementation of higher sustainability standards must, however, be measured against antitrust law. **Antitrust law allows within the framework of the so-called efficiency defence weighing protection of competition against sustainability goals,** especially if consumers benefit directly from climate protection measures. A general exemption of sustainability initiatives from antitrust law, however, is not recommended.

The Digital Markets Act (DMA) adopted at EU level, which is to come into force at the end of 2022, contains a large number of obligations for large digital companies so that they do not exploit their economic power at the expense of users. In the event of violations of the obligations of the DMA, the European Commission can impose sanctions. Prof. Jürgen Kühling, Chairman of the Monopolies Commission: **"To make the enforcement of the DMA even more effective, the Monopolies Commission**

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**recommends that the German legislator introduces supplementary rules for private actions for injunctions and for damages.** For example, the assessment of damages for users should be facilitated by providing in the law for a **presumption of damages as well as for an estimation of damages and for interest on claims for damages.**" In addition, the legislator should consider a liability of the responsible management.

„The digital transformation is **accompanied by increasing market power in the manufacturing sector, while it is actually decreasing in the service sector,**" observes Prof. Jürgen Kühling, Chairman of the Monopolies Commission. An indicator of the development of market power is the gap between economic production costs and market prices. The so-called price mark-ups rose by only 1.8% in the manufacturing sector in Germany between 2008 and 2017, while they fell by 6% in the service sector during the same period. Irrespective of the sector, especially large companies and **companies in highly concentrated industries, e.g. in the coking and mineral oil processing sector, already had significantly increasing price mark-ups before the current crisis.** However, high mark-ups in Germany, especially in service industries, also go hand in hand with high digitalisation investments and productivity increases. In the manufacturing sector, a correlation between digitalisation investments and price mark-ups can be observed, however without accompanying productivity increases.

The **share of the 100 largest German companies in total economic value added has fallen further to 14.0% in 2020.** Nor has there been any increase in the interdependence of large German companies in terms of personnel and capital. On the other hand, the **indirect ties of competitors via shares held by institutional investors, e.g. BlackRock or Vanguard, remains at a high level in Europe.** Overall, almost 80% of the economic sectors in Europe are affected by indirect horizontal ties. **Concentration has increased considerably among the most concentrated industries in the services sector. These include the regulated sectors of mobile telecommunications, postal, and long-distance rail services.**<sup>1</sup> Overall, however, the **development of concentration and market power in the German economy remains constant.** In view of the increasing potential for concentration due to the digital transformation and a possible weak economic phase ahead, the development in Germany should continue to be closely monitored.

The [Biennial Report](#) and a [podcast "CAST4COMPetition – Competition 2022"](#) are now available on the Monopolies Commission's website.

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. Dr. Jürgen Kühling, LL.M. is the Chairman of the Monopolies Commission.

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<sup>1</sup> Please note the following correction: The original press release on 5 July 2022 listed rail freight transport as one regulated sector exhibiting a significant increase in concentration. Since this sector in fact showed a decreasing concentration from 2011 onwards, long-distance rail services now serve as an example.