

## Press release

### The Monopolies Commission presents its 12th Sector Report on competition in telecommunications markets

#### "Competition in transition"

- Migration from copper to fiber-optic networks should be aligned with competition.
- Mobile communications frequencies should continue to be allocated by auction.
- Overregulation of interpersonal telecommunications services should be avoided.

In its sector report published today, the Monopolies Commission makes recommendations on how to foster competition at the network and service level to the benefit of end users. Competition is in a transition phase at several levels: At the network level, the migration from copper to fiber-optic fixed networks is forthcoming, and in mobile communications, the next frequency allocation procedure will set a decisive course for competition. At the service level, the amendment of the Telecommunications Act (TKG) has created a new legal framework for over-the-top (OTT) communications services such as WhatsApp and Threema, which will be included in regulation as interpersonal telecommunications services.

#### **Align the migration process from copper to fiber-optic networks with competition**

The copper switch-off and the transition to fiber-optic networks should be in line with competition. At the same time, planning certainty for market actors throughout the migration process is important. Both would be ensured if the copper-based wholesale prices were kept stable in real terms until the end of the migration process. The Monopolies Commission is critical of the fact that Deutsche Telekom AG has concluded long-term purchase agreements only with large wholesale customers. This permanently deprives fiber-optic network operators not participating in the commitment model of demand for network access, which in turn makes it more difficult for them to expand their networks. "*The commitment model can slow down the migration process overall to the detriment of smaller fiber-optic network operators, thus distorting competition,*" according to the Chairman of the Monopolies Commission, Professor Jürgen Kühling. Thus, these long-term access contracts should be examined with regards to their competitive effects. In order to create positive incentives in the migration process, the regulator should refrain from imposing comprehensive ex ante price regulation on fiber-optic networks, subject to the imposition of non-discrimination obligations.

### **Maintain auctioning of mobile communications frequencies**

Currently, only a limited amount of frequency spectrum is available for mobile communications. This should be allocated among the mobile network operators in such a way as to ensure both high-quality mobile communications coverage and competition between mobile networks. This is most likely ensured if mobile communications frequencies continue to be auctioned. *"A competitive procedure in the form of an auction must also be ensured for the future allocation of frequencies,"* says Professor Jürgen Kühling. The priority of the auction procedure, which was deleted in the most recent amendment to the TKG, should therefore be reinstated in the act. An extension of frequency allocations should only be considered if it is as short as possible with the aim of harmonizing the allocation of all frequency blocks in the area spectrum over time.

### **Avoid overregulation of interpersonal telecommunications services**

Until now, only end users of the same communications service, such as WhatsApp, Signal, Threema and Wire, can directly communicate with each other. Now the coalition parties intend to enable communications across services through an interoperability obligation. *"Such interoperability obligations should currently be rejected, as they would cause more harm than good for competition,"* according to Professor Jürgen Kühling. End users deliberately use several services in parallel and switch services according to their preferences. A symmetrical interoperability obligation that would also apply to smaller providers is, in the view of the Monopolies Commission, disproportionate and detrimental to competition, as these providers would be deprived of the opportunity to differentiate themselves from large providers through better functionalities or higher data protection standards. An asymmetrical interoperability obligation directed only at companies having market power only makes sense if a market failure is identified. Such a situation is not discernible at present.

The report is now available on the [website](#) of the Monopolies Commission.

The Monopolies Commission is a permanent, 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 Sector Report on competition in telecommunications. 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.