

Press release

Recommendations for an effective and efficient Digital Markets Act

The Monopolies Commission welcomes the European Commission's Proposal for a Digital Markets Act (DMA). The proposal stems from problems relating to the enforcement of existing EU competition law vis-à-vis large digital undertakings. Due to the highly-dynamic nature of the markets, proceedings are often initiated too late, and then take too long, not least because of their complexity. *"The structures of many digital markets are perpetually rigid. The DMA has the potential to dismantle the power positions on those markets,"* according to the Chairman of the Monopolies Commission, Prof. Jürgen Kühling. In its special report published today, the Monopolies Commission shows how the DMA can be better targeted to protect competition on digital markets, thus benefiting consumers.

Clearly orientating the DMA towards digital ecosystems

The Monopolies Commission recommends limiting the provisions to the operators of digital ecosystems. A small number of dominant tech corporations are expanding their economic power into increasing numbers of business areas, so that competition is no longer only endangered on individual markets, but in entire ecosystems. The current proposal targets undertakings known as gatekeepers, which operate core platform services such as search engines, operating systems, app stores or online marketplaces. However, competition is placed at particular risk if, for instance, a provider who operates an app store, an operating system, a search engine and a voice assistant service increasingly leverages its economic power from these business areas into other areas, and thus expands its dominant position there. The Monopolies Commission considers such cases to be the principal competition problems on digital markets, which are inadequately covered by the current proposal. The Monopolies Commission therefore argues that the DMA should only cover those undertakings which operate an ecosystem consisting of at least two connected core platform services, or which are active in a dual role, for example, as a marketplace operator and seller on the marketplace. Focusing on the ecosystem providers and on the key competition issues also enables a more effective use of the resources for the enforcement of the DMA.

Allowing regulatory exemptions which have clear benefits for consumers

The current draft of the DMA contains rules of conduct for digital gatekeepers, which dispense with an examination of the effects of conduct on competition in individual cases (known as per se rules). Exceptions to these rules of conduct can only be made within very narrow limits, e.g. for reasons of public safety. On the one hand, the concomitant clarity of the rules that have been established is important in the interest of rapidly enforcing the law. On the other hand, it clashes with potential advantages for consumers that may result from certain types of conduct, e.g. linking several own services or combining data. In order to take

Monopolies Commission

Kurt-Schumacher-Str. 8 · 53113 Bonn · Tel +49 . 228 . 338882 -30 · vorsitzender@monopolkommission.bund.de
www.monopolkommission.de

this into account, an exception to the rules of conduct – known as an efficiency defence – should be made possible in unambiguous cases. The undertakings would have to provide evidence of the existence of such advantages. The undertakings would also have to prove that the contestability and fairness of the digital markets are not significantly restricted by their conduct. Undertakings would also remain bound by the rules of conduct until an exemption was granted in order not to jeopardise the acceleration of the enforcement of the law, which is a central objective of the DMA.

Prohibiting self-preferencing practices more comprehensively

Selective extensions of the prohibitions can also take place, particularly if a narrowly-defined efficiency defence is opened up. The Monopolies Commission particularly recommends prohibiting “self-preferencing strategies” in ecosystems even more comprehensively than in the current proposal (subject to an efficiency defence). For instance, it should be prohibited for undertakings to set up their own services, such as a browser, as a default on their own operating systems, as should the particularly prominent presentation of their own products. *“Such self-preferencing strategies mean that ecosystem operators can no longer only foreclose competition on individual markets, but in the entire ecosystem,”* according to Prof. Jürgen Kühling.

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

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 Special Reports on current competition policy issues at its own discretion. 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.