

Press Release

Monopolies Commission presents its tenth Special Report on the state of competition on the postal markets:

“Post 2017: Eliminate privileges, design regulation effectively!”

- The Monopolies Commission notes almost no progress, even twenty years after the entry into force of the Postal Act, in the development of competition on the letter markets.
- The Monopolies Commission deems the creation of equal competitive conditions on the postal markets and the extension of the powers of the Federal Network Agency (*Bundesnetzagentur*) as urgently necessary preconditions for effective competition.
- The Monopolies Commission recommends a reform of the national regulatory framework and an examination of the agreements of international postal organisations.

The Monopolies Commission notes in its Special Report published today, entitled “**Eliminate privileges, design regulation effectively!**”, that there has been hardly any progress in the development of competition on the national letter markets. They continue to be dominated by the Deutsche Post AG, and an effective competition has not yet developed. On the national parcel markets competition prevails, but there is a high concentration of businesses in which the Deutsche Post AG has been able to solidify its leading market position. In cross-border postal services as well a high market concentration can be observed. In the transnational delivery of letters to and from Germany, the Deutsche Post AG holds a market-dominating position. To enhance competition it is particularly necessary in the view of the Monopolies Commission to reform the regulatory framework. “**First and foremost, the privileges of the Deutsche Post AG must be done away with and the powers of the Federal Network Agency must be substantially expanded**”, concludes the Chair of the Monopolies Commission, Professor Achim Wambach.

Until now only the Deutsche Post AG has profited from the **exemption from value-added tax** for the provision of universal services, which gives it cost advantages over its competitors. In order to avoid distortions of competition, the universal service provisions of all postal service providers should in the near term be exempted from value-added tax. In the long term, the value-added tax exemption should be eliminated throughout Europe. Also, the German state should divest itself of its shares, amounting to 20.9 per cent, in the Deutsche Post AG. This **shareholder status** gives the Deutsche Post AG competitive advantages, as it has a positive influence on its creditworthiness and thus on its refinancing terms. At the same time, by selling its shares the state would resolve the conflict of interests it has as regulator and owner. Currently the Deutsche Post AG is the only postal service provider that represents the Federal Republic of Germany in the **Universal Postal Union**, which controls the regulation of international mail. So as to create uniform competitive conditions in this respect as well, the federal government should without exception give all postal operators who agree to offer cross-border mail non-discriminatory access to the Universal Postal Union. Regarding cross-border mail within Europe the Deutsche Post AG is the only German

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member of the **International Post Corporation** to profit from the exclusive agreements with foreign postal companies on tariffs and on the development of technical standards for mail delivery. The European Commission last reviewed the agreements of the International Post Corporation in 2003, granting them a conditional exemption. It is now time for a competition-law examination of the agreements, which have since been revised many times.

For an effective regulation of the postal markets the **powers of the Federal Network Agency** should be substantially expanded. To protect consumers from exploitative pricing the regulation of letter rates must be designed in a cost-oriented manner. Therefore the so-called **Post-Entgeltregulierungsverordnung** should be amended to stipulate that the Federal Network Agency must calculate the “reasonable surcharge” based on entrepreneurial risk and not – as the current legal situation provides – based on the return on sales of foreign postal companies. Violations of the Postal Act, for instance by abusive behaviour, should be sanctionable by the Federal Network Agency with **fines**. A legal basis needs to be created for this. In addition, the Federal Network Agency should be given farther-reaching **rights of information**, comparable with the respective powers of the Federal Cartel Office (*Bundeskartellamt*). Such information rights, for instance vis-à-vis bulk mailers of letters and parcels, would considerably facilitate investigations in abuse proceedings.

Beyond this, the details of the principles of the **universal postal service** need to be refined appropriately as determined by representative market surveys. Adjusting the principles to fit today’s communications habits could reduce inefficiencies in the postal infrastructure. This would lead to cost reductions and provide financial relief to consumers.

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

The Monopolies Commission is a permanent, independent expert committee that advises the federal government and the legislative bodies in the fields of competition policy, competition law and regulation. Among its statutory duties is the preparation of a Special Report analysing the development of competition on the postal markets. The Monopolies Commission consists of five members, who are appointed by the Federal President after nomination by the government. The Chair of the Monopolies Commission is Professor Achim Wambach, Ph.D.

Selected recommendations to promote competition on the postal markets

To eliminate **the privileges of the Deutsche Post AG** the Monopolies Commission recommends:

- The shares held by the state in the Deutsche Post AG, in the amount of 20.9 per cent, should be divested. The shareholder status of the state has a positive influence on the creditworthiness of the Deutsche Post AG and thus on its refinancing terms. Furthermore, the state could resolve the conflict of interest it is currently exposed to in its role of both regulator and shareholder.
- The value-added tax exemption for universal service provision should in the short term be granted to all postal service providers without discrimination – and not, as has been the case until now, exclusively to the Deutsche Post AG. This requires an amendment of the VAT-Implementing Regulation by the Federal Ministry of Finance. In the final analysis, however, the VAT exemption should be done away with. The federal government should strive to achieve a revision of the VAT System Directive to this effect in the context of the legislative drafting procedure for the introduction of a definitive value-added tax system for postal services on the European level.
- Postal service providers who declare their willingness to offer cross-border postal services should be appointed as “designated operators” by the federal government for the purposes of the Universal Postal Union. The federal government should use a legal ordinance to determine the necessary details for accreditation.
- The multilateral agreements coordinated by the International Post Corporation on terminal dues for the delivery of incoming cross-border mail and on the development and implementation of technical and logistics standards for cross-border mail should be reviewed by the competent competition authorities.

To **expand the powers of the Federal Network Agency** for an effective regulation of the postal markets, the Monopolies Commission recommends:

- The current market and competitive conditions on the letter markets argue against suspending ex-ante regulation.
- To avoid excessively high letter rates, the “reasonable profit surcharge” should be determined based on the entrepreneurial risk of the regulated firm instead of on the basis of the foreign postal companies’ return on sales.
- All violations of the provisions of the Postal Act should be sanctionable by fine. The Federal Network Agency should have the power to set the fines based on competition-law rules.
- The Federal Network Agency should in future also have a right of information enforceable against both bulk mailers of letters and parcels and companies and consortia of companies not active in the postal system. Such an expanded right of information would, for instance, make it considerably easier to conduct investigations in abuse proceedings.

To guarantee a **timely and demand-appropriate design of the universal postal service** the Monopolies Commission recommends:

- The universal services principles should be modified on the basis of representative market surveys to take account of existing demands. If the principles are to be extended to include electronic services, the legal and infrastructural preconditions must first be created. These include putting electronic mail on an equal footing with physical letters, guaranteeing internet access – including an electronic mailbox – for every citizen etc.