

## Press Release

### **Monopolies Commission submits a Special Report on fixed book prices in Germany**

The Monopolies Commission has submitted its Special Report No. 80 with the title “Fixed book prices in a changing market environment” to the Federal Government and the legislative bodies. Prepared at the Monopolies Commission’s own discretion, this Special Report was prompted by a judgment from 2016 in which the Court of Justice of the European Union (ECJ) ruled that fixed prices for medicinal products in Germany were incompatible with the free movement of goods within the European Union (EU).

From a legal point of view, the protection of books as cultural objects is to be recognized, in principle, as an overriding requirement in the public interest. However, this cultural policy interest must be weighed against the interest in undistorted competition. Competition within the internal market is protected by EU law. National statutory rules on fixed book prices significantly interfere with the fundamental freedom of cross-border trade and constitute a serious market intervention. According to EU law, objective evidence that fixed book prices generate added value is required to justify such a market intervention. On the basis of the information available, it is questionable whether such evidence can be provided. At least to the extent that fixed book prices can affect the cross-border trade in books, it cannot be ruled out – and with regard to e-books it is even probable – that the ECJ will also declare fixed book prices incompatible with the free movement of goods. In this case, companies operating across borders could gain a competitive advantage over the stationary book trade in Germany by offering discounted printed books or e-books to German customers. The ECJ's ruling on fixed prices for medicinal products has shown that such an option would probably be used sooner or later.

From an economic point of view, fixed book prices cannot be conclusively assessed. The elimination of price competition at the retail level has ambivalent and to some extent unclear effects. Fixed book prices strengthen competition for ancillary services, slow down structural change in the brick-and-mortar book trade and decelerate the emergence of booksellers with buyer power. At the same time, they hinder the development of efficient trading structures and the attraction of new customer groups. They prevent cost advantages from being passed on to customers and impose a barrier to market entry. The relationship between fixed book prices, price levels, the variety of titles, and publishers' earnings remains unclear.

Even if fixed book prices slow down structural and functional change on all levels of the distribution chain, they cannot eliminate it. This is particularly evident in the brick-and-mortar book trade, which is continuously losing market share, mainly in favour of the online book trade, although fixed book prices apply. This raises the question as to whether the conventional infrastructure for the distribution of books still plays the role attributed to it. Due to digitalisation and the growing affinity of consumers to the internet, the importance of the traditional book trade and the bookselling services it provides tends to decline.

From the Monopolies Commission’s point of view – after considering all aspects – fixed book prices constitute a serious market intervention, which has no well-defined cultural pro-

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tection objective. The effects of this market intervention are ambivalent or unclear, and it does not take adequate account of the developments in the market. “For these reasons,” says Chairman Prof. Achim Wambach, “the Monopolies Commission recommends abolishing the statutory rules on fixed book prices. Before considering further measures to protect books as cultural assets, the objective of the protection must first be defined. Secondly, it must be examined whether and to what extent a protection deficit exists. Thirdly, it is only on this basis that it can be decided which instruments may be used to remedy deficiencies in such protection”.

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 discretionary Special Reports pursuant to § 44 of the Act Against Restraints on 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.