Bonn, 16 December 2013

Press Release

Monopolies Commission publishes Special Report on competition in the telecommunication markets

- Competition in the telecommunications retail markets continues to develop dynamically. The regulation of subscriber lines in the fixed network should be abandoned.
- The regulation of most inputs, however, remains indispensable.
- An industrial policy realignment of the telecommunications policy, as suggested in the European Union, is rejected along with the reduction of regulation of inputs with the aim to create incentives for investment in infrastructure by the incumbent.
- The expansion of broadband networks must continue to be market-driven and take place mainly through private investment. A broadband universal service should not be an option for the future.

Today the German Monopolies Commission (Monopolkommission) has submitted its Special Report according to Sec. 121 of the Telecommunications Act, bearing the title: **“Telecommunications 2013: Preserve Diversity in the Markets”** (“Telekommunikation 2013: “Vielfalt auf den Märkten erhalten”). It notes that the dynamic development of competition persists in the retail market and reiterates its demand that the regulation of subscriber lines should be abandoned. The regulation of most inputs, however, remains indispensable, since the products offered by competitors are based mostly on the access to the infrastructure of the dominant company.

The Monopolies Commission rejects an **industrial policy realignment** of the telecommunications policy in the European Union, which aims to accelerate consolidation processes in the markets and favor large companies. A focus on a few large companies would lead to a weakening of competition and rising consumer prices. "The telecommunications policy in Germany of the last 15 years has lead to more competition and thus more choice and lower prices for consumers. This success should not be jeopardized by an industrial policy realignment of the telecommunications policy that favors a few large European companies." says the chairman of the Monopolies Commission, Prof. Daniel Zimmer.

The Monopolies Commission calls for the continuation of **the regulation of inputs**, in order to incentivize investment in infrastructure by the incumbent. So far, mainly competition drives the market players to invest in broadband networks. A reduction of competition intensity through less regulation would be at the expense of infrastrucure investment. This is in particular because broadband investment in Germany is currently predominantly being made by alternative network operators.

The expansion of broadband networks in Germany must continue to be driven by the market and especially by private investment. A **broadband universal service** should not be an option for the future due to its anti-competitive effects, negative investment incentives and high costs. In places where the expansion of private high-performance broadband networks is not profitable, state aid programs in line with state aid rules of the European Union can be applied.

From a regulatory standpoint, and because of possible conflicts of interest arising from the simultaneous role as owner and regulator, it is necessary that the federal government resolves its direct and indirect stake in Deutsche Telekom AG. The proceeds from privatization could be used for funding broadband expansion.

The Monopolies Commission **commends the work of the Federal Network Agency in the telecommunications sector.** With its decision regarding vectoring technology, the Authority has paved the way for a rapid, comprehensive and largely legally secure network expansion and prevented a technology monopoly of Deutsche Telekom at the so-called last mile.

In view of the upcoming **frequency allocation procedures** in the mobile sector, the Monopolies Commission welcomes the plan of the Federal Network Agency to include all foreseeable available frequencies in the process. The decision on the allocation of frequencies should wait until there is clarity about the outcome of the merger control proceedings in the case O2/E-Plus. In any case, it has to be assured that market entry of potentially new operators is not blocked by the allocation process. The risk that strategic bidding can prevent market entry has to be considered.

The Monopolies Commission is critical to the initiatives amending the European regulatory framework for telecommunications markets.

- The introduction of a single **virtual access product** to the fixed network (bitstream) would weaken infrastructure-based competition in Germany. The access products differ according to national circumstances, as the infrastructure and the competitive situation have developed differently in the Member States. In Germany physical network access via the unbundled local loop dominates. The Monopolies Commission rejects the regulatory pre-stamped transition to a service competition.

- Through the **extension of participation rights of the European Commission in the allocation of mobile radio frequencies** additional competencies, which are currently with the national regulatory authorities, are going be centralized at the European level. Frequency allocation procedures would thus become more time-consuming and bureaucratic.

- The planned changes of the **Roaming Regulation** are not about the introduction of competition on roaming markets but about the rapid and complete abolition of roaming charges. The Monopolies Commission worries about the potential effects on the market structures in mobile communications.

- The envisaged revision of the so-called **market recommendation** is to be seen positive. The Monopolies Commission sees no need to include additional markets in the regulation, but supports the removal of the retail market for subscribers.

On the occasion of the debate about the slowing down of the transmission speed of internet connections the Monopolies Commission has once again addressed the issue of **net neutrality**. It reiterates its statement that a strict interpretation of net neutrality can not be justified. Rather net neutrality in a broader sense is to be advocated, which allows for price and quality differenciations, as long as they are based on objective criteria and not handled discriminatorily. The best-effort Internet should be secured through minimum requirements. The adoption of a national net neutrality regulation is not recommended at this point in time.

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. Its legal responsibilites encompass, among others, the preparation of a Special Report analyzing the development of competition in the telecommunications markets. The Monopolies Commission has five Members appointed by the Federal President based on a proposal of the German government. Prof. Dr. Daniel Zimmer of Bonn University is the chair of the Monopolies Commission.