



## POLICY ROUNDTABLES

### Excessive Prices

2011

#### Introduction

The OECD Competition Committee debated excessive prices in October 2011. This document includes an executive summary of that debate and the documents from the meeting: an analytical note by the OECD Secretariat together with a companion paper by Alan Gregory and a short paper by Misja Mikkers and Wolf Sauter, written submissions from Australia, Brazil, Bulgaria, Chile, the Czech Republic, Denmark, the European Union, Finland, Germany, Greece, Hungary, India, Indonesia, Israel, Korea, Lithuania, Mexico, the Russian Federation, South Africa, Switzerland, Chinese Taipei, Turkey, United Kingdom, the United States, and BIAC and an aide-memoire of the discussion.

#### Overview

One of the most controversial theories of harm in competition law in general and within the category of exploitative abuses in particular is excessive prices. Regulatory interventions with the aim of curbing excessive prices are prevalent not only in those jurisdictions that allow for excessive price cases in antitrust but also in those where competition law does not foresee abusively excessive prices as an antitrust offense.

The reasons against excessive prices cases include *inter alia* the risk of undermining investment incentives both, of firms already in the market and potential entrants, the legal uncertainty that may be associated with the concept and also the risk of competition authorities overstepping their legitimacy in light of political pressures. Reasons in favour of excessive prices as an antitrust offence include *inter alia* limited potential for market self-correction due to permanently high entry barriers, the lack of self-correcting high prices and the absence of a regulator or regulatory failure. One of the most prominent reasons in favour of excessive price cases in light of the consumer orientation of most competition laws is that excessive prices exert the most direct negative impact on consumers.

#### Related Topics

- The Regulated Conduct Defence (2011)
- Remedies and Sanctions in Abuse of dominance cases (2006)
- OECD Guiding Principles for Regulatory Quality and Performance (2005)
- Access Pricing (2004)
- Relationship between regulators and competition authorities (1999)