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The Antitrust Authority:

Enforcement against Unfair Prices When There Is No Competitive Solution

- * **The Authority maintains its ability to enforce the prohibition in cases of public interest**
- * **Chairman of the OECD Competition Committee: the Authority should focus its efforts on opening markets to competition and not merely treating the problem's symptoms**

Today (Wednesday) the Antitrust Authority published a public statement draft for public comment, regarding its considerations on the enforcement against excessive unfair prices. The document suggests that the Authority would act in cases where no other competitive solution is available for addressing the underlying problem in the specific market. The Authority decided to repeal the "safe harbor" provided by the previous public statement, according to which as long as the difference between the product's price and the cost of its production is less than 20%, no enforcement action is to be taken against the monopoly holder. The decision to repeal the safe harbor was made following many difficulties arising due to its mere existence, and especially owing to the incorrect public perception that a monopoly's profit above 20% is considered wrong and illegal.

The public statement draft is born of a reexamination process of public statement 1/14, which came into force in April 2014. As part of the reexamination, the Authority held a thorough hearing process including receiving positions from the public and the opinion of Prof. Frederic Jenny, which was uploaded to the Authority's website for the benefit of the public. Prof. Frederic Jenny is an international expert on competition law and is chairman of the OECD Competition Committee. In addition, a public symposium was held on 6 September 2016 with experts in the field of antitrust and regulation experts.

Prof. Jenny noted in his opinion that direct enforcement against the price collected by the monopoly holder is like treating the symptoms of a condition without addressing the

underlying causes. Actions aimed at changing market structures are therefore preferable to direct enforcement against high prices. In addition, Prof. Jenny stated that the enforcement against excessive unfair prices requires taking significant risks and could cause harm to the market in the long run.

The enforcement policy presented in the document is meant to delineate the mile blocks for the Authority's examination of the enforcement of the prohibition of excessive unfair prices being charged, with the intension to imbue the business sector with certainty on the one hand, while on the other hand using enforcement tools in cases of public interest.

The principles of enforcement against an unfair price:

1. The Authority will act against firms charging excessive unfair prices in cases where there is no other competitive remedy available for addressing the underlying problem in the specific market. The Authority will prefer a structural solution to the local treatment of prices. The reason for this is the understanding that even after the enforcement against the price of a single product, the monopoly holder would still hold market power enabling said monopoly owner to raise prices under various pretexts or lower the quality of the services or products sold in the market.
2. The Authority will act when the price are significantly higher than the price charged under competitive conditions, and when there are indications arising inter alia from the monopoly holder's position and the balance of power between the monopoly holder and consumers, that the high price charged is unfair. The Authority clarifies in the document that the decision when a **high** price becomes **unfair** is a complex one, involving a determination of value and of a social nature.

Another factor the Authority will date into account will be the extent of the monopoly's dominance over the market. The Authority will examine holders of monopolies that are consistently close to dominating the market for an extended period of time. The existence of a position close to full market domination intensifies the harm to consumers in light of the high price they pay and the limited alternatives available to them.

3. The Authority will not enforce the prohibition in a market where there is an industry regulator for prices set in the market.

According to the public statement draft, the safe harbor established in public statement 1/14, according to which, monopoly holders were protected from enforcement action as long as the difference between the price of their products and their production costs were less than 20%, is repealed. The decision to repeal the safe harbor was made in light of theoretical and practical difficulties it raises.

The public statement draft published today should replace public statement 1/14. The draft will be available to the public and open to public comment until 21 November 2016.