



# Excessive Pricing in Pharmaceuticals

DAF / Competition Division, OECD

Firenze, November 2019



# Excessive Pricing

## Enforcement Screens

- Significant Market Power
- High and Durable Barriers to Entry
- Intervention should not adversely affect innovation and research
- Alternative regulatory intervention either impossible, very unlikely, inappropriate or absent



# Questions

---

- Does the pharmaceutical sector meet these criteria?
- How should excessive pricing tests be applied in the heavily regulated pharma sector?
- Should both generics and branded medicines be subject to excessive pricing?
- **Why now?**
  - In 2011, only three excessive pricing pharma cases
    - all decade(s) old



# Observations

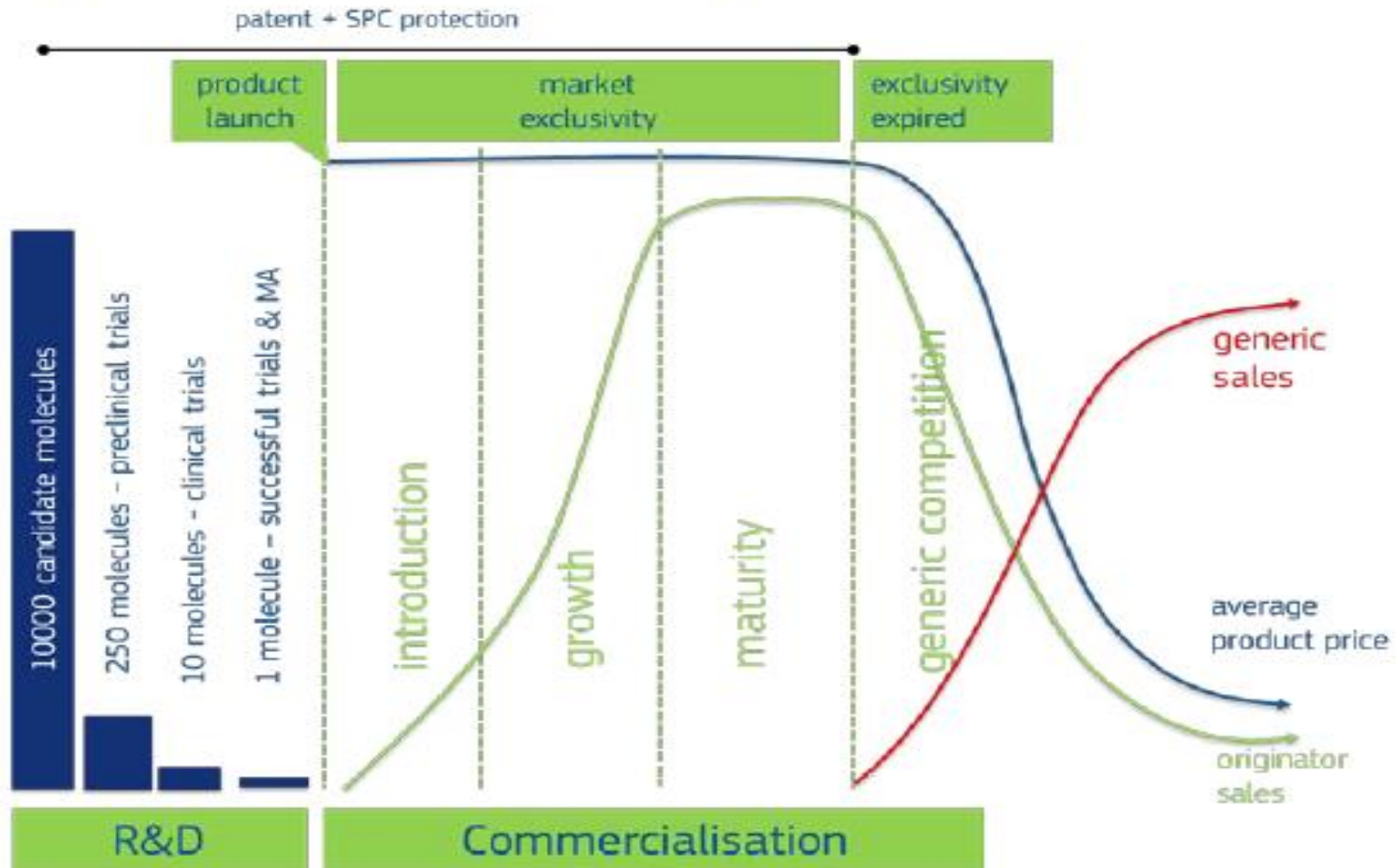
---

- Cases meet main enforcement screens
  - Significant Market Power
    - Only products in market, and essential to patients
  - High and Durable Barriers to Entry
    - No generic entry
  - Intervention should not adversely affect innovation and research
    - Off-patent drugs and exploitative conduct
  - No alternative regulatory intervention available
    - Regulatory framework clearly failed



# Product Life Cycle - Supply

Figure 5: Pharmaceutical product life-cycle





# Observations

---

- Increasing supply issues around the world (WHO)
- Many price increases follow market exit
- Decline in number of Generics Suppliers
  - 40% of generics' markets are supplied by a single manufacturer
  - Seven suppliers provide majority of injectable products (US)
- Increasing number of price spikes
  - US GAO tracked 1,411 generics between 2011-2015
    - 315 instances of sudden price increases of 100% or more
    - 48 instances of sudden price increases of 500% or more
    - Price increases >100% doubled between 2010 (43 instances) and 2015 (103 instances)



# What is going on? And what to do about it?

---

- High Prices may reflect fundamental market changes
  - Increased market concentration
  - Reduced Competition
- This is a systemic issue
  - Excessive pricing cases are expensive, lengthy and risky
  - Are they suitable to address a sector-wide issue?
  - Should reaction not be regulatory?
- But what can competition law do?
  - Well, excessive pricing... but also more traditional competition enforcement
  - Market studies
  - More stringent merger control
  - Cooperate with, or call for regulation



---

**Thank you for your attention!**

Contact: [pedro.carodesousa@oecd.org](mailto:pedro.carodesousa@oecd.org)

More on the OECD's work: <http://www.oecd.org/daf/competition/>