The second question appears to be answered affirmatively by the Commission in its preliminary decisions in the Starbucks and Fiat transfer pricing cases. Both of these cases involved multinational enterprises (MNEs) that claimed a tax advantage by applying transfer pricing rules inconsistently across different jurisdictions. The Commission found that these practices provided an unfair advantage to the MNEs by exploiting differences in tax laws between countries.

The Commission's position in these cases is that it is not concerned with general double non-taxation effects flowing from its own tax rules. Instead, the Commission focuses on specific transfer pricing issues, such as the use of the arm's length principle (ALP) to ensure that profits are allocated in a manner consistent with the requirements of the tax treaties.

The Commission's approach to the ALP is explained in the preliminary decisions of the Starbucks and Fiat cases. These decisions highlight the Commission's concern with ensuring that profits are allocated in a manner consistent with the requirements of the tax treaties. The Commission's position is that it is not concerned with general double non-taxation effects flowing from its own tax rules, but rather focuses on specific transfer pricing issues.

In the case of Starbucks, the Commission found that the profits of the MNE were allocated in a manner inconsistent with the requirements of the tax treaties. Specifically, the Commission found that Starbucks had created a virtual permanent establishment in Luxembourg to avoid paying taxes in the US, where the profits would otherwise have been taxed.

In the case of Fiat, the Commission found that Fiat had created a virtual permanent establishment in Luxembourg to avoid paying taxes in the US, where the profits would otherwise have been taxed.

The Commission's position in these cases is that it is not concerned with general double non-taxation effects flowing from its own tax rules, but rather focuses on specific transfer pricing issues. The Commission's approach to the ALP is explained in the preliminary decisions of the Starbucks and Fiat cases. These decisions highlight the Commission's concern with ensuring that profits are allocated in a manner consistent with the requirements of the tax treaties.