

INTERNATIONAL COMPETITION NETWORK UNILATERAL CONDUCT WORKING GROUP 2007-2008 WORK PLAN

MISSION AND ORGANIZATION

The ICN Unilateral Conduct Working Group (Working Group) was established primarily to examine the challenges involved in addressing unilateral conduct of dominant firms/firms with market power, and to promote greater convergence and sound enforcement of laws governing unilateral conduct.

The Working Group is co-chaired by the U.S. Federal Trade Commission and the German Bundeskartellamt. Thirty-five agencies and one international organization have joined the Working Group, actively supported by over 80 non-governmental advisors (NGAs). NGAs were identified by ICN member agencies, and liaise with and provide input into projects predominantly through the agencies. The Working Group holds periodic teleconferences with all members of the Working Group, and also with NGAs to ensure that they have an opportunity to provide their input.

WORK TO DATE

In its first year (2006-2007), the Working Group surveyed members and NGAs and produced a report on unilateral conduct that includes chapters on the Objectives of Unilateral Conduct Laws, the Assessment of Dominance/Substantial Market Power, and State-Created Monopolies. This work was conducted in two subgroups, one (led by the US FTC and Mexican Federal Competition Commission) on objectives of unilateral conduct rules, and the other (led by the German Bundeskartellamt and the Russian Federal Antimonopoly Service) on market power/dominance, with the Turkish Competition Authority leading a project on state-created monopolies. The report identifies growing agreement in many important areas, as well as areas of difference.

PROJECTS

Guidance and Practical Tools (Objectives, Dominance, State-Created Monopolies): Based on the Report, the Working Group and the subgroups have begun to develop ideas for additional guidance and practical tools to assist agencies in these areas, including some form of recommended practices focusing on the assessment of dominance and the application of unilateral conduct rules to state-create monopolies. The Working Group may also develop examples of how agencies and courts have effectively used the factors identified in the report in investigations and decisions.

Begin Work on Conduct: In the 2007-2008 ICN year, the Working Group will begin the second phase of its work (as provided in the Mandate) on the analysis of unilateral conduct. The Working Group will begin by examining specific practices, and intends to start with predatory pricing (a price-related practice) and single branding/exclusive dealing (a non-price-related practice). For each practice, the group will gather information, including through a questionnaire, on agencies' approaches to assessing the conduct, the tests used to distinguish pro-competitive from anti-competitive conduct, defenses, burden of proof, etc. The Working Group expects its work on conduct to last several years, and that it will examine other practices at a later stage. On the basis of the analysis of various practices, the Working Group will consider work on a general framework for assessing conduct.

Possible Workshop: The Working Group will consider holding a workshop aimed at furthering understanding of issues raised in its report and guidance document, using hypothetical fact patterns based on agencies' experience to initiate discussion of issues relating to objectives, assessment of dominance, state-created monopolies, and conduct.