



International
Competition
Network

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ICN Unilateral Conduct Working Group

TELESEMINAR ON
REMEDIES IN UNILATERAL CONDUCT CASES
11 MARCH 2010

Introductory Remarks by Operator



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- **Welcome by Operator**

- **Panelists and Participants please note:**
 - Audience will be muted during most parts of the teleseminar call („Audience Call“)

 - Audience will be be unmuted during Q&A

 - Teleseminar will be recorded

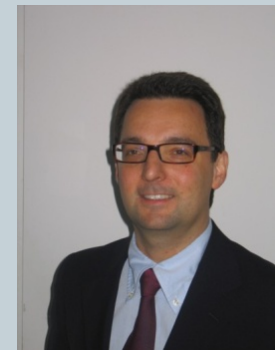
- **Operator will then turn over to UCWG Co-host Markus Lange (*Bundeskartellamt, Germany*)**

Welcome by UCWG Co-Chair Markus Lange



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- ICN teleseminars have proven to be effective instruments to provide a forum for the sharing of experience and the fostering of consensus.
- Today's seminar is the second teleseminar held by the ICN Unilateral Conduct Working Group. The first seminar on Excessive Pricing was very well received and more than 150 participants joined. A recording is posted on the ICN website.
- This seminar aims to promote the understanding of remedies in unilateral conduct cases.
- The slides prepared will lead you through the seminar. They can be downloaded from the ICN website. Those of you that have registered in advance can also follow along by going on the link provided to you along with the confirmation.
- The agenda for today's teleseminar is as follows:



Teleseminar Agenda



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- I. Introduction by co-host Randy Tritell (U.S. *Federal Trade Commission*)
- II. Presentation of Principles and Issues to Consider in Crafting Remedies by Howard Shelanski (U.S. *Federal Trade Commission*)
- III. Panel Discussion of Hypothetical 1
- IV. Q & A with Audience regarding Hypothetical 1
- V. Panel Discussion of Hypothetical 2
- VI. Q&A with Audience regarding Hypothetical 2
- VI. Concluding Remarks

Introduction by UCWG Co-Chair Randy Tritell



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- Dominance cases are not easy! The theories are often complex and controversial. The facts may be difficult to investigate. Harm may be difficult to prove. And when you are all finished with that set of problems and have proven your case...
- You have a new set of problems! How can you stop, deter, and/ or properly punish the company for its unlawful conduct? Especially without causing even more problems, such as impairing the ability of the dominant firm to compete, or causing years of headaches for your agency to monitor the remedy?



Introduction (II)



- Today's teleseminar brings together agency and practitioner experts from four continents to share their experience and expertise on these issues.
- We use teleseminars to address difficult issues that may not be readily amenable to consensus normative guidance such as recommended practices. We seek to highlight issues, enhance understanding, and learn from colleagues around the world.
- I hope you find that we achieve this objective!

Introduction of Panelists (I)



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- **Howard Shelanski**, Deputy Director for Antitrust, Bureau of Economics, U.S. Federal Trade Commission
- **Dr. Wolfgang Deselaers**, Partner, Linklaters (Brussels and Düsseldorf)
- **Matthew Kellison**, Senior Competition Law Officer, Canadian Competition Bureau
- **Barbara Rosenberg**, Partner, Barbosa, Müssnich e Aragão Advogados, Brasilia
- **Hiroshi Yamada**, Director, International Affairs, Japan Fair Trade Commission

Introduction of Panelists (II)



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- **Howard Shelanski**

- Howard Shelanski is Deputy Director of the Bureau of Economics at the Federal Trade Commission, where he is responsible for the Bureau's antitrust portfolio. Since 1997 he has been professor of law at the University of California at Berkeley. Shelanski recently joined the faculty of the Georgetown University Law Center, from which he is on leave while at the FTC. His research focuses on antitrust and regulation.
- Shelanski has twice before served in government, as Senior Economist at the President's Council of Economic Advisers (1998-1999) and as Chief Economist at the Federal Communications Commission (1999-2000). Before joining the Berkeley faculty he practiced law in Washington, DC and served as a law clerk to Justice Antonin Scalia on the US Supreme Court, Judge Louis H. Pollak on the US District Court in Philadelphia, and Judge Stephen F. Williams on the US Court of Appeals in Washington DC. Shelanski earned his JD and his Ph.D in economics at the University of California at Berkeley and his BA at Haverford College



Introduction of Panelists (III)



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- **Dr. Wolfgang Deselaers**

- Wolfgang Deselaers is a partner in the Brussels and Dusseldorf law offices of Linklaters. His main areas of practice include EU and German merger control, multi-jurisdictional filings, joint ventures, cartels, unilateral conduct and state aid. He represents clients before the European Commission, the German Federal Cartel Office, the European Courts and German Courts.
- He is a Member of the Board of the German competition law association (Studienvereinigung Kartellrecht) and a non-governmental advisor to the International Competition Network



Introduction of Panelists (IV)



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- **Matthew Kellison**
- Matthew is a Senior Competition Law Officer at Canada's Competition Bureau. He works in the Bureau's Civil Matters Branch and deals primarily with unilateral conduct enforcement and other restrictive trade practices, particularly in telecommunications and other regulated industries.
- He is one of the drafters of the Bureau's *Information Bulletin on the Abuse of Dominance Provisions as Applied to the Telecommunications Industry*, as well as a number of other Bureau enforcement guidelines. Matthew holds a M.A. in Economics from Queen's University.

Introduction of Panelists (V)



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- **Barbara Rosenberg**

- Partner of Barbosa, Müssnich e Aragão Advogados, Brasilia. Practice Area: Competition Law, Regulation and International Trade.
- Barbara has also worked as Director of the Economic Protection and Defense Department of the Economic Law Secretariat of the Ministry of Justice (Feb/03 - Dec/05).
- She teaches competition, international trade and intellectual property law at the Getúlio Vargas Foundation Law School. She is also part of the editorial board of the Brazilian Institute of Competition, Consumer and International Trade Law Review and the Getúlio Vargas Foundation Law School Review.



Introduction of Panelists (VI)



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- **Hiroshi Yamada**
- Hiroshi graduated from University of Tokyo, faculty of economics and entered Japan Fair Trade Commission in 1984
- After holding various posts including director of the M&A division, head of investigation unit, attaché of Permanent Delegation of Japan to the OECD, etc., he was appointed as Director of International Affairs Division in 2009.



Hypothetical 1 – Facts of the Case (I)



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- **BigTel** is a dominant Phone-Land domiciled firm that controls 100% of **Phone-Land** local telephone services. BigTel owns each of the three geographically separate local telephone exchanges in Phone Land.
- BigTel also has an 80% share in wired long distance services, an 80% share in cellular services, and a 90% share in retail Internet service provision.
- BigTel is a formerly state-owned enterprise that is not currently subject to sector regulation.

Hypothetical 1 – Facts of the Case (II)



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- Phone-Land's Competition Commission (**CompCom**) has found that BigTel has engaged in anticompetitive practices aimed at retaining its monopoly in local, long distance, cellular, and Internet services, including,
 - (1) refusing to interconnect with wireless cellular carriers that want access to the local exchange except on terms that would cause the wireless carriers to operate at a loss;
 - (2) refusing to provide access to local exchange switches to prospective wholesalers of local telecommunications services; and
 - (3) refusing to allow other cellular companies wholesale access to Internet transport services, which would be required to stimulate retail competition in Internet services provision

Hypothetical 1 – Facts of the Case (III)



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- Pursuant to its legal authority, CompCom is considering a number of alternative remedies to combat Big Tel’s monopoly power, including:
 - **Structural Relief**
 - *Breaking BigTel into four companies*, with each maintaining one Phone-Land’s three local telephone exchange services and a fourth company owning all of BT’s other assets;
 - *Breaking BigTel into three companies*, with one company maintaining local services, one owning long distance and cellular services, and one owning Internet services;
 - *Other structural reconfigurations*; and/or
 - **Behavioral Relief**
 - *Requiring BigTel to interconnect* with wireless cellular carriers, and to provide access to both local exchange switches and Internet transport services:
 - At cost-based rates; or
 - On (F)RAND terms that allow new competitors to cover costs and “compete effectively.”
 - *Other behavioral relief.*

Hypothetical 1 – Q & A with Audience



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- Participants may ask questions through the teleconference operator or can submit them during the call to Andrew Heimert at aheimert@ftc.gov

Hypothetical 2 – Facts of the Case (I)



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- **TelCo** is the dominant provider of wired telephone services in **TV-Land**, with over 80% of the market. It is not subject to sectoral regulation.
- TelCo also provides subscription television services (PayTV). It introduced these services three years ago in conjunction with upgrades to its landline network from copper to fiber optics.
- To promote its PayTV at introduction, TelCo offered bundled packages that provide consumers with discounts if they add subscription television services to their wired telephone service.

Hypothetical 2 – Facts of the Case (II)



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- TV-Land has three other PayTV providers, each offering a similar range of programming that goes well beyond the two state-owned broadcast networks.
- Two land-based services, **TV3** and **TV4**, and one satellite television service, **TV5**, together currently have 75% of the market (each of them with a market share of roughly 25 %), down from 100% when TelCo PayTV was introduced.
- The remaining 25 % of the market is currently held by TelCo PayTV services.

Hypothetical 2 – Facts of the Case (III)



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- The Competition Commission of TV-Land (**CompCom**) investigated the case and concluded that the practice violated its abuse of dominance provisions because the bundled price of the PayTV service was below the relevant costs, once the entire discount was allocated to the bundled product.
- Based on a rapid increase in TelCo's market shares, the CompCom also found that TelCo was likely to acquire a dominant position if it was allowed to continue its bundling practices.

Hypothetical 2 – Facts of the Case (IV)



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- Pursuant to its legal authority, CompCom is considering a number of alternative remedies:
 - A *prohibition* of the bundled discounts;
 - a *fixed limit* on the discounts, based on TelCo's current relevant costs;
 - a *dynamic limit* on the discounts based on the relevant costs of the other three providers (determined annually by CompCom); and/or
 - a *fine* based on TelCo's turnover.

Hypothetical 2 – Q & A with Audience



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- Participants may ask questions through the teleconference operator or can submit them during the call to Andrew Heimert at aheimert@ftc.gov

Concluding Remarks



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- **Summary of discussion**
- **Outline of ongoing work in the ICN Unilateral Conduct Working Group**
 - Report on Refusal to Deal (over 40 questionnaire responses posted on the ICN website) will be presented at the upcoming Annual Conference

 - Annual Conference Program
 - ✦ Plenary Structured Debate will discuss Margin Squeeze

 - Next member and NGA conference call on March 17th

 - For any questions regarding the UCWG please contact
 - ✦ Cynthia Lagdameo at the FTC (clagdameo@ftc.gov)
 - ✦ Thilo Reimers at the Bundeskartellamt (thilo.reimers@bundeskartellamt.bund.de)

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