

**INTERNATIONAL COMPETITION NETWORK
UNILATERAL CONDUCT WORKING GROUP
2009-2010 WORK PLAN**

MISSION AND ORGANIZATION

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

The Working Group is co-chaired by the U.S. Federal Trade Commission and the German Bundeskartellamt. The group is supported by a substantial number of NGAs from around the world who 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.

PROJECTS FOR 2009-2010

Continue Work on Conduct: The Working Group will continue its work on the analysis of unilateral conduct by examining additional types of conduct, to be determined following discussion at the 8th annual ICN conference. Working Group members support addressing refusals to deal, which could include margin squeeze. The group will gather information through a questionnaire on issues including agencies' approaches to assessing the conduct and the tests used to distinguish pro-competitive from anticompetitive conduct. The Working Group will consider undertaking additional normative work at a later stage following further work on specific types of conduct.

In-Depth Discussions of Unilateral Conduct Issues. The Working Group will facilitate discussion of issues that arise in analyzing unilateral conduct. The discussions are beneficial in their own right, as they increase mutual understanding of different approaches. During the coming year, the Working Group will identify issues of mutual interest and seek opportunities for members to explore them further. For example, the group may hold conference calls that will enable members to delve into discrete issues of mutual concern, identify commonalities and differences in agencies' approaches, and better understand the relative advantages and drawbacks of different policies. A possible topic is the analysis of remedies in unilateral conduct cases.

WORK TO DATE

Report on the Objectives of Unilateral Conduct Laws, Assessment of Dominance/Substantial Market Power, and State-Created Monopolies. In its first year (2006-07), 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. The report identifies growing agreement in many important areas, as well as areas of difference.

The report is available at:

http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/Objectives%20of%20Unilateral%20Conduct%20May%202007.pdf.

Guidance Documents. Based on the report, in 2007-2008, the Working Group developed recommended practices to assist agencies with the assessment of dominance/substantial market power and the application of unilateral conduct rules to state-created monopolies. The recommended practices were adopted at the 7th annual ICN conference in Kyoto in 2008. The recommended practices are available at:

http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/Unilateral_WG_1.pdf (Dominance/Substantial Market Power Analysis);

http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/Unilateral_WG_2.pdf (State-Created Monopolies Analysis).

Conduct Reports

In the 2007-08 ICN year, the Working Group began the second phase of its work (as provided in the Mandate) on the analysis of specific types of unilateral conduct. It gathered information through questionnaires on agencies' approaches to assessing the conduct and the criteria used to distinguish pro-competitive from anti-competitive conduct. The Working Group began by examining predatory pricing and single branding/exclusive dealing. In the 2008-09 ICN year, the Working Group continued its work on the analysis of unilateral conduct by examining tying/bundled discounting and loyalty discounts and rebates.

- **Predatory Pricing and Exclusive Dealing/Single Branding:** The group developed papers that summarize agency practice with respect to predatory pricing in 35 jurisdictions and with respect to exclusive dealing/single branding in 33 jurisdictions. The reports are available at http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/FINALPredatoryPricingPDF.pdf (Predatory Pricing); http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/Unilateral_WG_4.pdf (Exclusive Dealing).
- **Tying/Bundled Discounting and Single Product Loyalty Discounts and Rebates.** The group developed papers that summarize agency practice with respect to tying/bundled discounting in 35 jurisdictions and with respect to loyalty discounts and rebates in 34 jurisdictions. The reports will be posted on the ICN website following the 8th annual ICN conference in Zurich in 2009.

Unilateral Conduct Workshop: The Working Group held a workshop in Washington, D.C., in 2009 aimed at exploring in greater depth the issues raised in its recommended practices and conduct reports. Nearly 130 delegates from 35 jurisdictions attended in person and an even greater number participated via a live webcast. A recording of the workshop is available on the ICN website at http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/FTCindex.html#Mar23_09.

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TIME LINE**

(subject to revision based on the progress of the work)

June 17	Initial conference call to discuss approach to conduct work and teleseminars
June - September	Draft and discuss questionnaire with members and NGAs; conduct test run of draft questionnaire; finalize questionnaire Discuss teleseminar topics
September 30	Circulate questionnaire, with deadline in November
Week of Oct. 19	Meeting with dial-in during OECD meetings to discuss work product and teleseminars
Early November	Teleseminar
Nov. – early Feb.	Discuss outline of work product; compile and discuss first drafts with members and NGAs
Early February	Teleseminar
Week of Feb. 15	Meeting with dial-in during OECD meetings to discuss annual conference program and future work
Late February	Discuss draft report(s)
March 10	Finalize report(s) and discuss future work and annual conference program
March 24	Finalize future work plan and annual conference program

For information:

25-26 September 2009
19-22 October 2009
15-19 February 2010
21-23 April 2010

Fordham conference, New York
OECD Competition Committee meetings, Paris
OECD Competition Committee meetings, Paris
ABA Antitrust Section Meeting, Washington, D.C.