

# Unilateral Conduct Working Group (UCWG)

## Short Form Work Plan

### 2023 - 2024 Projects

Pursuant to ‘**Working Group structure and 3 year plan**’ the Unilateral Conduct Working Group will work on the following projects during the 2023-2024 ICN year:

Project 1 - The use of urgency enforcement tools in the context of abuse of dominance proceedings

Project 2 - Follow up on theories of harm and remedies in digital markets

Project 3 - Webinars

Project 4 - Implementation

### **Project 1 - The use of urgency enforcement tools in the context of abuse of dominance proceedings**

The UCWG will focus its attention on urgency enforcement tools, including interim measures that may be used by competition agencies in the context of abuse of dominance proceedings. Such tools aim at ensuring, in a relatively short timeframe and where certain conditions are fulfilled, that effective competition is maintained and damage is averted, while proceedings on the merits are ongoing. Many jurisdictions worldwide have the power to implement these types of tools and have acquired significant experience in this respect, in every sector of the economy. The use of such tools in the context of the digital economy has also recently drawn the attention of the competition community.

A BOS has been dedicated to this issue during the 2022 annual conference in Berlin, as well as during the UCWG workshop in Tokyo in March 2023.

The UCWG is currently working on a questionnaire to be sent to the ICN UCWG member agencies and NGAs before the end of 2023 with the purpose of gathering information on national/regional legal frameworks and identifying the benefits, challenges, and risks of such tools. In the wake of the questionnaire, the UCWG co-chairs will coordinate the preparation of a practical document (for example in the form of a Comparative Report and/or Good Practices, Guiding Principles, or Checklist) aimed at guiding competition agencies that already benefit from these tools, and possibly informing those who might wish to add this tool to their competition law framework.

This project will be led by the French *Autorité de la concurrence* with the cooperation of CADE

### **Project 2 - Follow up on theories of harm and remedies in digital markets.**

Following up on the report “Analysis of Theories of Harm and Design of Remedies Concerning Unilateral Conduct with Dominance/Substantial Market Power in Digital

Markets”, presented in the latest UCWG Workshop 2023, the UCWG aims to respond to ICN members request for further ICN guidance – in the form of a separate and focused document – on the analysis of theories of harm and the design, implementation, and monitoring of remedies concerning unilateral conduct by companies with dominance/substantial market power in digital markets.

The UCWG will focus its attention on specific theories of harm and remedies connected to digital markets. To kick-off the work, the UCWG plans to design a detailed questionnaire to be circulated among members for feedback. The results will be reflected in a report.

This project will be led by the CNMC with the cooperation of CADE and the Turkish Competition Authority.

### **Project 3 - Webinars**

The Working Group will possibly hold 5 webinars on issues of mutual interest that arise in analysing unilateral conduct. The discussions will aim to increase understanding of differences in standards in relation to unilateral conduct and their advantages and drawbacks, and to promote implementation of UCWG work products. Webinar topics are to be discussed with the Working Group.

Topics to be addressed in 2023-2024 shall include the ones listed below, subject to further suggestions that may be made at and following the 2023 annual conference:

- Lesson learnt in regulated sectors. The goal would be to share takeaways from the analysis of solutions provided in sectoral regulation that can be applied to cases of unilateral practices in regulated sectors, such as the digital sector. It also aims at delving into the relationship between antitrust rules and sectoral regulation. Additionally, the discussion could explore the interplay with digital regulation and how authorities can streamline their approach to unilateral practices in these markets. This webinar would take place at the first quarter of 2024 and will be organized by CADE.
- Synergies between unilateral conduct enforcement and mergers review. This is an opportunity to discuss on the coincidences between the analysis of mergers and unilateral practices cases. The goal is to come up with ideas that make enforcement more efficient and seize the synergies between the two policies. This webinar would take place at the first quarter of 2024 and will be organized by the Turkish Competition Authority.
- Interim measures in unilateral conduct proceedings. This webinar will provide an opportunity to share experience and discuss challenges regarding the need for swift intervention for competition enforcers. It will complement the work undertaken in the framework of Project 1. This webinar will be organized by CADE with the cooperation of the French Autorité de la concurrence.
- Exclusive dealing. This webinar will revisit a topic that was the subject of a workbook chapter produced by UCWG in 2013. The aim of the webinar is to share knowledge and experiences about new developments on the topic since 2013, particularly in

light of digitalization. The webinar will therefore also serve as a complement to project 2 on theories of harm and remedies in digital markets. A short synthesis report may be drafted to sum up the conclusions of the webinar. Using the knowledge gained, the UCWG may aim to update the existing workbook chapter in 2024-2025. The webinar will be led by the Swedish Competition Authority.

- Tying and bundling. The Workbook Chapter on tying and bundling was published in 2015. Since then, new versions of tying and bundling infringements have emerged. While there may have been different ways of tying/bundling in traditional markets, agencies have detected new versions of tying in digital markets as well. (i) Tying via pre-installed applications or software, (ii) default settings and/or (iii) making the use of a service conditional on signing to another separate service are a few examples for these conducts. The aim for this webinar is to discover and discuss the experiences of agencies in terms of these new developments. Up on the outcomes of the webinar, the Workbook Chapter on Tying and Bundling is planned to be updated starting from the 2023-2024 ICN year. The webinar will be organized by the Turkish Competition Authority.

Q1/Q2 2024	Webinar about synergies between review of mergers and unilateral conduct rules enforcement
Q1/Q2 2024	Webinar on interim measures in unilateral conduct proceedings
Q1 2024	Webinar about lessons and solutions from sectoral regulation to be applied to unilateral conduct cases
Q1 2024	Webinar about new developments in the topic of exclusive dealing since 2013, particularly in light of digitalization.
Q4 2023	Webinar about new developments in the area of tying and bundling practices since 2015, especially with respect to digital markets.

#### **Project 4 - Implementation**

The Working Group will promote implementation of its existing work-products. It is envisaged to utilise the webinars included in the work plan as the main forum.

This work will be coordinated by the four Co-Chairs.