



The ICN UCWG Webinar on

“Exclusive Dealing in Unilateral Conduct Enforcement”

Concept Note

Exclusive dealing generally refers to an arrangement where one party (e.g. a supplier or distributor) agrees to trade exclusively with the other, thereby preventing dealings with the supplier’s competitors. Competition laws treat these arrangements as potentially anti-competitive when they foreclose market access for rivals, especially if imposed by firms with substantial market power.

This webinar will provide an opportunity to discuss exclusive dealing as a form of unilateral conduct under competition law. The goal is to examine recent developments and trends regarding exclusive dealing arrangements, and to generate ideas on how competition agencies can effectively address such practices.

Overall, it will serve as a platform for exchanging opinions, case experiences, and policy perspectives on exclusive dealing.

The following issues and questions may be discussed in the webinar:

- Exclusive dealing can eliminate or weaken competitors by foreclosing their access to important trading partners or distribution channels. The discussion could compare how different jurisdictions assess foreclosures, for example by considering which market coverage or contract terms raise red flags, and the burden of proof for demonstrating anti-competitive effects.
- Digital platforms may use exclusivity to secure key business users or maintain quality standards. While such exclusivity can help a platform ensure quality control or compensate investment, it also raises competition concerns in the presence of strong network effects. If a dominant platform locks in important users exclusively, it can attract more consumers, which in turn attracts even more business users. When multi-homing (users being able to use multiple platforms) is limited, an exclusive deal can tip the market in favor of the incumbent platform. The webinar may highlight emerging enforcement examples and the particular challenges posed by digital ecosystems.
- The assessment of dominance or substantial market power plays a central role in exclusive dealing analysis. In markets where customers depend heavily on certain suppliers, or where switching is costly, exclusivity may have stronger exclusionary effects. The webinar may explore how different authorities evaluate these market conditions and how these findings influence the enforcement outcome.

- Competition agencies frequently encounter claims that exclusivity promotes efficiencies—such as investment incentives, product quality, free-riding prevention, or improved distribution systems. The way in which these justifications are assessed, and the evidentiary burden placed on undertakings, may be another topic for discussion.
- Another topic relates to how different jurisdictions assess exclusive dealing by dominant firms. These differences raise practical questions about the evidentiary standards applied to exclusive dealing, the circumstances in which economic tests meaningfully assist the analysis, and when agencies may rely on conduct-based or structural assessments instead. The webinar may explore how these jurisdictional approaches influence enforcement strategies and the implications for evaluating exclusive dealing in unilateral conduct cases.
- A further discussion point may concern whether exclusive dealing should be regarded as a per se infringement or assessed under a rule-of-reason / effects-based framework. Authorities differ on whether exclusivity by a dominant firm warrants a presumption of illegality or requires a full case-by-case analysis, and the webinar may explore the implications of these divergent approaches.
- The webinar may also consider the key analytical challenges associated with evaluating exclusive dealing, including identifying the required legal and economic conditions for finding an abuse, determining when foreclosure is sufficiently likely or significant, and clarifying the evidentiary standard for both the authority and the investigated undertaking.

The issues that can be addressed in the UCWG webinar on “Exclusive Dealing in Unilateral Conduct Enforcement” is not limited to above-mentioned points. The expressions of interests may also include other topics that are found relevant by the potential speakers.