

## **Unilateral Conduct Working Group 2019-2022 Work Plan**

### **MISSION**

The Unilateral Conduct Working Group was established at the fifth annual ICN conference in May 2006. Its primary objectives are to examine the challenges involved in analysing unilateral conduct of dominant firms and firms with substantial market power, facilitate greater understanding of the issues involved in analysing unilateral conduct, and promote convergence and sound enforcement of laws governing unilateral conduct.

### **ORGANISATION**

For 2019-2022, the Working Group will be co-chaired by the Italian Competition Authority, the South Africa Competition Commission and the Directorate General for Competition (European Commission) which replaced the Australian Consumer and Competition Commission after the 2019 annual meeting in Cartagena. The Group is comprised of over 60 ICN members and is supported by a substantial number of NGAs from around the world. The Working Group holds periodic teleconferences with all members and NGAs.

### **LONG TERM GOALS**

To achieve its mission of examining and facilitating understanding of issues related to unilateral conduct and vertical restraints, the Working Group strives to:

- Provide a forum for sharing experience and fostering consensus.
- Promote greater international convergence and increase understanding regarding standards for assessing relevant conduct.
- Help members improve the quality of their enforcement.
- Encourage the use of economic analysis in enforcement.
- Strengthen cooperation among competition agencies in their review of relevant cases.
- Deepen understanding of the strengths and weaknesses of remedial options in relevant conduct cases.
- Promote the implementation of the Recommended Practices and assess possible problems related to its implementation.

## **2019 - 2022 STRATEGIC PLAN**

The Working Group proposes the following areas of future work, taking into account feedback from the Second Decade Project and considering factors suggested by the Steering Group, *i.e.*, the audience for the Group's work product; a balance between implementing existing work product and creating new work product; the focus on core projects; a balance between work that is ripe for convergence efforts and comparative dialogue; projects that complement the institutional strengths and impact of ICN's mission; projects that encourage inclusiveness and broader member and NGA engagement; and initiatives that are well suited to ICN's practical, project-oriented nature.

### **1. Promote greater convergence and increase understanding regarding the assessment of dominance in digital markets**

- Initiating a multi-year project to explore how competition agencies define and assess dominance and market power in the digital era. Project deliverables may include short and focused documents such as comparative reports and practical guidance containing practical tips and hints to assist competition agencies in addressing the challenges of enforcing unilateral conduct laws in the digital era.

### **2. Promote greater convergence and increase understanding regarding unilateral conduct standards**

- Continue work on the analysis of unilateral conduct through comparative reports. The Working Group may examine types of conduct that it has not previously covered in its reports, such as excessive pricing and price discrimination.

### **3. Promote greater understanding regarding standards for assessing vertical restraints**

- Continuing the discussion on vertical restraints, based on the Vertical Restraints Report presented at the 2019 annual conference in Cartagena and through sharing of experiences.

### **4. Promote implementation of work product and provide training opportunities**

- Promote implementation of the Working Group's work product, particularly the Recommended Practices and Workbook (including the chapter on Analytical Framework), including through workshops and webinars and the use of the self-assessment tool to be developed in 2019-2020, by coordinating with the Promotion & Implementation Team.

- Continue to understand difficulties encountered with the implementation of its work product and to find ways to overcome them, including by seeking volunteers to translate work product into other languages.
- Encourage Members and NGAs to promote implementation when commenting on laws and guidelines and in speeches and articles.
- Conduct a series of training webinars. The Working Group will develop a curriculum drawing on the Working Group's work product and agencies' experience that addresses topics of interest.
- Help develop modules on unilateral conduct for the ICN Training On Demand Project. The Working Group will provide its expertise and support to the ICN Training On Demand Project when it starts to produce training modules on the analysis of unilateral conduct.

#### **5. Facilitate discussion and enhance cooperation**

- Continue to facilitate discussion of issues that arise in analysing unilateral conduct. The Working Group will hold a Workshop in Fall 2019. Two or three teleseminars will be held each year and the Working Group also will consider organizing workshops and/or plenary and breakout sessions tailored to the needs of less experienced agencies.
- Consider work on cooperation in enforcement in these areas, which may include: the objectives of cooperation; the types of cases that may benefit from cooperation; cooperation tools; impediments to cooperation; confidentiality and privilege considerations; cooperation on remedies; how parties can facilitate cooperation; and what makes for effective cooperation.

#### **6. Expand participation by Members and NGAs**

- Actively encourage Working Group Members and NGAs, and as appropriate ICN Members and NGAs from outside the Working Group, to participate in the group's work, workshops, teleseminars, and webinar training sessions through regular e-mails and other communications.
- Encourage continued participation by economists to further explore unilateral conduct from traditional economic and law and economics perspectives (error costs, optimal rules).

## Unilateral Conduct Working Group

### Annual Plan

#### 2019-2020 Projects

Pursuant to its Mission and Long-Term Work Plan, the UCWG will work on the following projects during the 2019-2020 ICN year:

#### A. Written Work Product

##### (1) Project 1 (Scoping Project) Assessing Dominance in Digital Era

In 2019 the Working Group will commence a new multi-year project exploring the main issues and challenges connected with the assessment of dominance in the digital era. In the first year, a scoping work will be carried out to identify the areas of analysis, the appropriate methodologies (e.g., survey, webinars, etc.) and the expected outputs.

For instance, topics could include:

- Market definition in multi-sided markets;
- Competition process (e.g., measuring contestability, tipping effects);
- Role of big data (input, competitive advantage, or barrier to entry/expansion); and,
- Investigative skills and issues.

The scoping exercise will take stock of the growing economic literature, the discussions held at the UCWG sessions of the 2019 annual conference, and finally the valuable existing work carried out by competition authorities, international organizations and other public institutions around the world, in order to better identify areas of analysis, avoiding overlaps and design outputs that are tailored to the needs of competition agencies.

While the final output of the project might result in a recommendation to revise the current Recommended Practices on Dominance/Significant Market Power to account for the peculiarities of the digitalization, intermediate deliverables would include short and focused documents such as comparative reports and practical guidance containing practical tips and hints to assist competition agencies in addressing the challenges of enforcing unilateral conduct laws in the digital era.

This work will be coordinated by the Italian Competition Authority and the European Commission DG Comp.

## **(2) Finalising the Vertical Restraints Project**

At the annual conference 2019 the UCWG presented a report summarising the main findings in relation to the assessment of two types of online vertical restraints ((i) retail price parity clauses by hotel booking platforms (OTAs) and (ii) online platform sales ban and online search advertising ban in selective distribution agreements), based on two hypotheticals.

In 2019-2020 the UCWG intends to conclude the project and, to this end, it will organise some webinars to draw out the key points that emerge in the hypotheticals and/or sharing recent enforcement experience some webinars to draw out the key points that emerge in the hypotheticals and/or sharing recent enforcement experience.

This project is being led by the ACCC.

## **(3) Webinars**

The Working Group will hold 3 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 2019-2020 could include the following list to be complemented with further suggestions to be collected at the 2019 annual conference:

- Findings from the Vertical Restraints project;
- Dominance assessment in the context of multi-sided platforms;
- The counterfactual scenario: When should it be used, what are the pitfalls, and where does the burden of proof lie?

This work will be coordinated by the South Africa Competition Commission.

June/July 2019	Preparation for first webinar
October 2019	First webinar held
Oct/November 2019	Preparation for second webinar
December 2019	Second webinar held
Dec/January 2020	Preparation for third webinar
February 2020	Third webinar held

**(4) Finalising the Report on the Self-assessment tool for the RPs on Dominance / Substantial Market Power**

The objective of this project to (i) promote/test the familiarity of the 2006 ICN Recommended Practices on Dominance/Substantial Market Power among the ICN members, especially the younger ones and (ii) offer them a tool to self-assess the adherence or conformity of their law and practice to the ICN standards. A questionnaire with yes / no questions was sent out to UCWG members with a view to representing a self-assessment tool which will help agencies to compare how their practice in assessing dominance compares with the Recommended Practices (RPs). The responses have been summarised in a report which will be finalised in 2019-2020.

This project will be led by the Competition Commission of India.

**B. Workshop**

The Working Group will convene a Workshop in November 2019, in [TBC]. The theme of the Workshop is the assessment of a conduct, tying, with the help of hypothetical case study and ICN work products. Preparations for the Workshop will be coordinated by the Co-Chairs in partnership with host agency. Steps for planning the Workshop will include selecting and arranging a venue; creating an agenda for the Workshop; coordinating and organising presentations from a variety of agencies; managing registration, etc. The projected timeline for this project is from July 2019 to October 2019.

This project is led by the three co-chairs and the host agency.

**C. Implementation, Training & Outreach**

The Working Group will promote implementation of its work and encourage members to share: (i) experiences of recent unilateral conduct cases from their jurisdictions, (ii) implementation stories related to how agencies conform their law and practice to ICN standards. In this regard, the self-assessment tool to be finalised in 2019-2020 (see above) will be another tool for promoting convergence and mutual understanding and activities.

The Working Group will assist the ICN Training On Demand Working Group in the planning and production of the module on Single Firm Conduct, being prepared by the NGA Philip Marsden .