

Unilateral Conduct Working Group

2020-2023 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 2020-2023, the Working Group will be co-chaired by the South African Competition Commission, the Directorate General for Competition (European Commission) and the Japan Fair Trade Commission, which replaced the Italian Competition Authority in May 2020. 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.

2020 - 2023 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 and the audience for the Group's work product. The future work aims to achieve a balance between implementing existing work products and creating new ones as well as to achieve a balance between work that is ripe for convergence efforts and comparative dialogue. It also focuses on core projects that complement the institutional strengths and impact of the ICN's mission as well as on projects that encourage inclusiveness and broader member and NGA engagement as well as 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

- Continue the multi-year project "Assessment of Dominance in Digital Era" which seeks to collect and consolidate the experience of competition agencies in assessing dominance/substantial market power in digital markets and deepen the common knowledge on this topic. Project deliverables may include short and focused documents such as comparative reports and guidance containing, for example, practical tips 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 or advancing with new chapters in the Work Book. The Working Group may consider examining specific aspects of antitrust enforcement in the area of unilateral conduct that is of common interest or explore the assessment of unilateral conduct in specific markets or sectors.

3. 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 through workshops and webinars.
- 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 stands ready to provide its expertise and support to the ICN Training on Demand Project when appropriate.

4. Facilitate discussion and enhance cooperation

- Continue to facilitate discussion of issues that arise in analysing unilateral conduct. The Working Group plans to hold a Workshop in March 2021 (including plenary and breakout sessions tailored to the needs of less experienced agencies). On average, two or three teleseminars/webinars will be held each year.
- 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.

5. 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 economics and law perspectives (error costs, optimal rules).

Unilateral Conduct Working Group

Annual Plan

2020-2021 Projects

Project 1. Assessment of Dominance in Digital Era

Project 2. Webinars

Project 3 Implementation

Project 4 Workshop

Project 1 Assessing Dominance in Digital Era

In 2020 to 2021 the Working Group will continue the multi-year project which explores the main issues and challenges connected with the assessment of dominance in the digital era.

The survey on the “Assessment of Dominance/Substantial Market Power in Digital Markets” requires first analysis of the replies of ICN member agencies as well as interested NGAs, which were received earlier in 2020. The survey aims at first understanding whether:

- experience suggests that the assessment of dominance/substantial market power in digital markets requires consideration of factors different from those guiding that assessment in other, non-digital markets or whether the same factors have a different importance; and
- ICN members wish to have ICN guidance on the subject or whether existing ICN documents need to be revised, in order to reflect the specificities related to the assessment of dominance/substantial market power in digital markets.

A first analysis of the results of the survey will be available by September 2020 (Annual Conference).

The initial survey results should also allow to appraise whether some specific aspects relating to the assessment of dominance/substantial market power in digital markets will have to be further deepened in the course of 2020/21 and whether specific ICN guidance is needed. Some of these working strands (notably the one on specific ICN guidance) are likely to last into the next ICN year(s).

This work will be coordinated by DG COMP and Japan.

Project 2 Webinars

The Working Group will hold at least three 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 2020-2021 might include those listed below subject to further suggestions that may be made at the 2020 annual conference:

- Webinars related to the survey on “Assessment of Dominance/Substantial Market Power in Digital Markets” and its follow-up (concrete topics are likely to emerge from the first analysis of the survey results, e.g. “Relevance and computation of market shares in the assessment of dominance in digital markets: practical experience”);
- Abuse of dominance in regulated sectors;
- Enforcement in the pharma sector (with focus on market definition, patent strategies and sham litigation);
- Abuse of superior bargaining position in the digital age.

This work will be coordinated by South Africa (with support of DG COMP).

June/July 2020	Preparation for first webinar
October 2020 (mid)	First webinar held
Oct/November 2020	Preparation for second webinar
December 2020 (1 st half)	Second webinar held
Dec/January 2021	Preparation for third webinar
February 2021	Third webinar held

Project 3 Implementation

The Working Group will promote implementation of its work-products, particularly the Recommended Practices on Dominance and will utilise the webinar series as the main forum.

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



Project 4 Workshop

It is planned that the UCWG Workshop will be held in India in March 2021.

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

In view of the Covid-19 crisis: in the context of the Workshop and/or Webinars, providing ICN members and NGAs with the opportunity to share experience and relevant information on: “How does the Covid-19 crisis affect the assessment of unilateral conduct”.

PAST PROJECTS

Assessing Dominance in Digital Era

Following the Annual Conference in Cartagena in 2019, the UCWG started a new multi-year project exploring the main issues and challenges connected with the assessment of dominance in the digital era.

Still in 2019, a survey on the “Assessment of Dominance/Substantial Market Power in Digital Markets” was launched, seeking to ascertain whether:

- The experience of the ICN members suggests that the assessment of dominance/substantial market power in digital markets requires consideration of factors different from those guiding the assessment of dominance/substantial market power in non-digital markets and/or whether the same factors have different importance in digital markets; and
- ICN members wish to have specific ICN guidance on assessment of dominance/substantial market power in digital markets or consider that existing ICN documents can be revised to provide more detailed guidance.

The survey was addressed to the ICN competition authorities and their NGAs.

A first analysis of the replies is in preparation and will be available by September 2020 (Annual Conference).

2019 Unilateral Conduct Workshop

COFECE of Mexico hosted the eighth ICN Unilateral Conduct Workshop in Mexico City on 14-15 November 2019. 144 delegates participated in the Workshop, representing 32 jurisdictions. The event focused on two key themes: (i) Recent developments in market definition and market power of digital platform markets, and (ii) tying: recent theory and practice in digital markets. The Workshop also offered practical, hands-on breakout sessions, based on hypothetical scenarios relating to these themes. The relevant materials can be found here: <https://www.cofece.mx/uc-workshop2019/>

Webinars

The UCWG held three webinars. Two webinars covered the topic of dominance assessment in two-sided platforms. The third one looked at vertical restraints, an exploration of remedies and addressing market harm in the digital era.

Unilateral Conduct Working Group	Remarks /Updates
2019 Unilateral Conduct Workshop	https://www.cofece.mx/uc-workshop2019/
<p>Assessing Dominance in Digital Era</p> <p><i>First analysis of survey replies to be available by September 2020 (Annual Conference).</i></p>	<p><i>The project continues in the 2020-2021 ICN year (results from the ongoing survey will show the need for e.g. the deepening of specific aspects relating to the assessment of dominance/substantial market power in digital markets and for specific ICN guidance).</i></p>
<p>Webinars on:</p> <ul style="list-style-type: none"> • Dominance Assessment in Two-Sided Platforms (2 webinars) • Vertical Restraints - An Exploration of Remedies and Addressing Market Harm in the Digital Era 	